

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

December 9, 2010

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawai'i

Board Members:

SUBJECT: REQUEST TO AMEND A FISCAL YEAR 2008 GRANT FROM THE LEGACY LAND CONSERVATION PROGRAM TO MAUI COASTAL LAND TRUST BY REDUCING THE ACERAGE OF THE APPROVED PROJECT

**SUMMARY:**

Through the Fiscal Year 2008 (FY08) Legacy Land Conservation Program (LLCP), the Board of Land and Natural Resources awarded funds to the Maui Coastal Land Trust (MCLT) for the purchase of 128 acres in Nu'u Makai on the Island of Maui. On behalf of MCLT, the Division of Forestry and Wildlife ("DOFAW") is seeking approval for a reduction in acreage of the approved project from 128 to approximately 82 acres.

**BACKGROUND:**

On May 9, 2008, pursuant to H.R.S., 173A, the Board awarded \$994,724 to the Maui Coastal Land Trust for the acquisition of 128 acres in Nu'u Makai, southeast shore, Island of Maui. Following this award, the Board and MCLT was entered into a grant agreement defining the terms and conditions of this award. On June 24, 2010, the grant agreement was amended to extend the time of performance for MCLT to June 30, 2011 (Attachment 1).

The description of the proposed project includes the purchase of portions of two parcels of land equaling approximately 128 acres, tax map keys (TMKs) (2) 1-8-001:001 and (2) 1-7-004:003, in Nu'u Makai, located on Maui's south east shore between Kanaio and Kaupo at the foot of Haleakala, for the protection of coastal, wetland, habitat, historical, and cultural values. Resources include pristine coastal lands, burial sites, petroglyphs, remnant walls, and a fishing shrine. MCLT proposed purchasing the property from Kaupo Ranch and stated that MCLT would work closely with the Kaupo community to draft a management plan that reflects the need to both protect and restore the fragile ecosystem and take into account the community's values and vision.

According to Dale Bonar, Executive Director of MCLT, the resources explained on the initial project application to the Legacy Land Conservation Commission ("Commission") have not been changed by the reduction in acreage. The project application submitted by MCLT during the FY08 grant cycle

(attached as Exhibit B to Attachment 2) had listed 128 acres; however, the maps and resource descriptions were largely limited to a 78-acre parcel that approximately corresponds to the new acreage. At the December 14, 2007, meeting of the Commission, Member Karen Young asked the MCLT representative to clarify the application's varying references to the project's acreage. Mr. Scott Fisher of MCLT explained that MCLT had applied to protect the resources on an area of about 78 acres; however, MCLT would acquire the entire 128 acres if given the chance, in order to extend protection to neighboring archeological resources (see page 5 of December 14, 2007, meeting minutes, Attachment 3).

The November 15, 2010, letter from MCLT (Attachment 2) states that a title review done by the United States Fish and Wildlife Service revealed a discrepancy in the County of Maui's subdivision records and tax map key assignments. MCLT worked with the landowner and the County of Maui to reassign TMKs and resurvey the metes and bounds of the property in early 2010. MCLT has since reassessed the TMKs and acreage that correspond to the land and resources that MCLT had targeted for protection. Therefore, MCLT has requested that the Department allow a revision to the proposed project to include only TMK (2) 1-8-001:001 at 81.447 acres.

### DISCUSSION:

DOFAW is in the process of consulting with the Legacy Land Conservation Commission and the Senate President and Speaker of the House of Representatives (under Chapter 173A, HRS, these parties are part of the decision-making process). The Commission's comments will be sought at its December 3, 2010, meeting, and comments from the legislators were solicited via written correspondence on November 24, 2010. Results of these consultations will be reported at this meeting.

Pending comments from the Commission and the legislators, DOFAW supports allowing MCLT to reduce the acreage of this project. The Division feels that, while the acreage reduction is substantial, the resource protection goals of this project have not changed substantially in terms of what was initially approved. The coastal wetland habitat described in the project application will be protected by acquisition of the reduced acreage. Additionally, the MCLT has provided a high proportion of matching funds for this project. MCLT submitted an appraisal for the 81.447 acre parcel that indicates the fair market value of the property as \$4,020,000, and the Department has reviewed and approved this appraisal. MCLT has secured \$2,749,000 in matching federal funds and will use a land value donation and private funding to secure the full amount needed for purchase. Given that MCLT has will provide a majority of the funding for this project through other sources (approximately 75% in matching funds) the Division supports allowing MCLT to reduce the acreage and continue towards securing the protection of these resources.


### RECOMMENDATIONS:

That the Board:

- 1) Authorize the revision of the approved grant from "Maui Coastal Land Trust at \$994,724 for the acquisition of 128 acres in Nu'u Makai, southeast shore, Island of Maui," to "Maui Coastal Land Trust at \$994,724 for the acquisition of 81.447 acres in Nu'u Makai, southeast shore, Island of Maui;" and

- 2) Authorize the Chairperson to execute an amendment to the June 30, 2008, Legacy Land Conservation Program Grant Agreement with Maui Coastal Land Trust and Amendment No. 1 to Legacy Land Conservation Program Grant Agreement, in order to effectuate this change in acreage, subject to:
  - a. Review and approval by the Department of the Attorney General; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

  
 for PAUL J. CONRY, Administrator  
 Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

  
 LAURA H. THIELEN, Chairperson  
 Board of Land and Natural Resources

ATTACHMENTS:

- |               |   |
|---------------|---|
| Attachment 1: | November 15, 2010, letter from Dale Bonar, Maui Coastal Land Trust, and attachments   |
| Attachment 2: | June 30, 2008, Legacy Land Conservation Program Grant Agreement with Maui Coastal Land Trust, and Amendment No. 1 to Legacy Land Conservation Program Grant Agreement |
| Attachment 3: | December 14, 2007, minutes of the Legacy Land Conservation Commission   |

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2010**

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**MAUI COASTAL LAND TRUST**

November 15, 2010

Ms. Molly Schmidt  
Legacy Land Conservation Commission  
Department of Land and Natural Resources  
1151 Punchbowl St. Rm. 325  
Honolulu, HI 96813

Dear Molly,

**RE: Nu`u Wetlands LLCF Acquisition (Contract # 57553)**

I apologize for the confusion about the acreage in the Nu`u wetlands documentation. When USFW reviewed the title documents last summer, they noted that the County of Maui's Tax Department computer database did not show the subdivided parcels of the original TMK (1-8-001-001, totaling 2,663.42 acres). This despite the fact the County Public Works department had approved the subdivision into 17 parcels back in 1999 (attached).

We subsequently had the owners work with the County to assign TMKs, and a re-survey of the property in question was conducted. (attached) At that time we realized the original designation of 128 acres in the "2" TMKs we thought was the area under consideration, was incorrect, and the property for which the grant was written was actually a single parcel of 81.447 acres as shown on the new survey map. (TMK 1-8-0001-001 portion).

Both the original appraisal in 2008 and the current one conducted in 2010 are only for the 81.447 acres of that single TMK. The final appraised value is above the purchase price, so this remains a bargain sale.

Please let me know if I can provide further information.

Dale B. Bonar,  
Executive Director

Encl: Maui County Separate Lot Determination Letter (1999)  
Valera Survey, Nov. 2009  
Title Report, January, 2010



4-14-1999 7:50AM

FROM COM"DPW"ENGINEERING 0082437975

P. 1

JAMES "KIMO" APANA  
Mayor

CHARLES JENCKS  
Director

DAVID C. GOODE  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND WASTE MANAGEMENT  
ENGINEERING DIVISION  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96763

RALPH NAGAMINE, L.S., P.E.  
Land Use and Codes Administration

Wastewater Reclamation Division

LOYD P.C.W. LEE, P.E.  
Engineering Division

ANDREW M. HIROSE  
Solid Waste Division

BRIAN HASHIRO, P.E.  
Highways Division

April 13, 1999

**FILE COPY**

Mr. Bruce R. Lee, LPLS, President  
NEWCOMER-LEE LAND SURVEYORS, INC.  
1498 Lower Main Street, Suite "D"  
Wailuku, HI 96793-1937

SUBJECT: REQUEST FOR SEPARATE LOT DETERMINATION FOR KAUPŌ RANCH  
TAX MAP KEY (2) 1-7-004:001 PORTIONS  
TAX MAP KEY (2) 1-7-004:003  
TAX MAP KEY (2) 1-8-001:001  
NU'U, PU'UMANE'ONE'O, KOU, KAUPŌ, MAUI, HAWAII

Dear Mr. Lee:

We reviewed your request of April 6, 1999 with enclosures and a faxed document (Royal Patent Grant 3460) received from Mr. Starr on April 12, 1999.

Based on your evaluation and enclosures, we will observe the seventeen (17) lots requested. The lots are as shown on the enclosed map marked Exhibit "A". The Lot shown as number 17 is Lot 2 as described in Royal Patent Grant 3460 to William Mutch.

The purpose of this review is to determine the status of the land titles or portions of the land titles as separate lots within the subject tax map keys. The purpose of this review was not to determine the ownership, metes and bounds and/or area of the land titles and/or portions of the land titles reviewed.

Pillani Highway is a County Highway. Mr. Mike Baker, Maui Trails and Access Manager verbally (April 12, 1999 phone call) confirmed that the remaining trails and/or roadways fall under the control and management of the Department of Land and Natural Resources. We would appreciate a letter to that effect from Mr. Baker.

4-14-1999 7:51AM

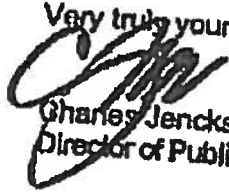
FROM COM"DPW"ENGINEERING 8082437975

P. 2

April 13, 1999  
Mr. Bruce R. Lee, LPLS, President  
NEWCOMER-LEE LAND SURVEYORS, INC.  
REQUEST FOR SEPARATE LOT DETERMINATION FOR KAUPU RANCH  
Page 2

Please call Allen Watanabe at (808) 243-7441, if you should have any questions.

Very truly yours,

  
Charles Jencks  
Director of Public Works and Waste Management

AKW:(ED99-388)  
C:\ENG\ALL\WORK\KAUPU\020101EE

Enclosure: Exhibit "A", Map of Seventeen Lots

xc with Enclosure: Land Use and Codes Administration  
Hugh Starr

Lot Determinations  
March 18, 1999

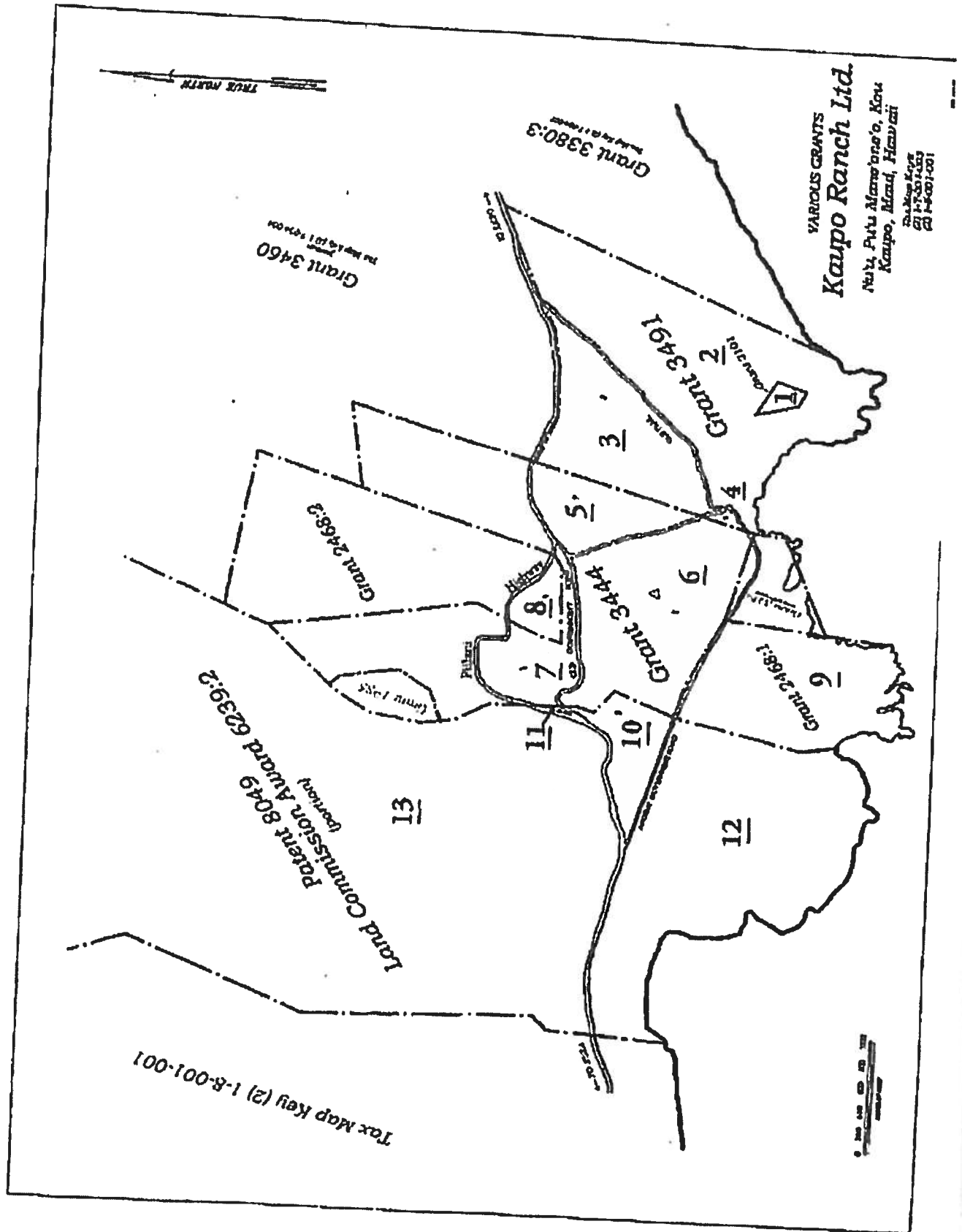
**Spreadsheet of the Impacts of Government Rights-of-Ways on  
Remnants of Grants and Land Commission Awards**  
TMK: (2) 1-7-004-003 and 1-8-001-001; Regular System  
Nu'u, Pu'u mane'one'o, & Kou, Kaupo, Maui, Hawaii

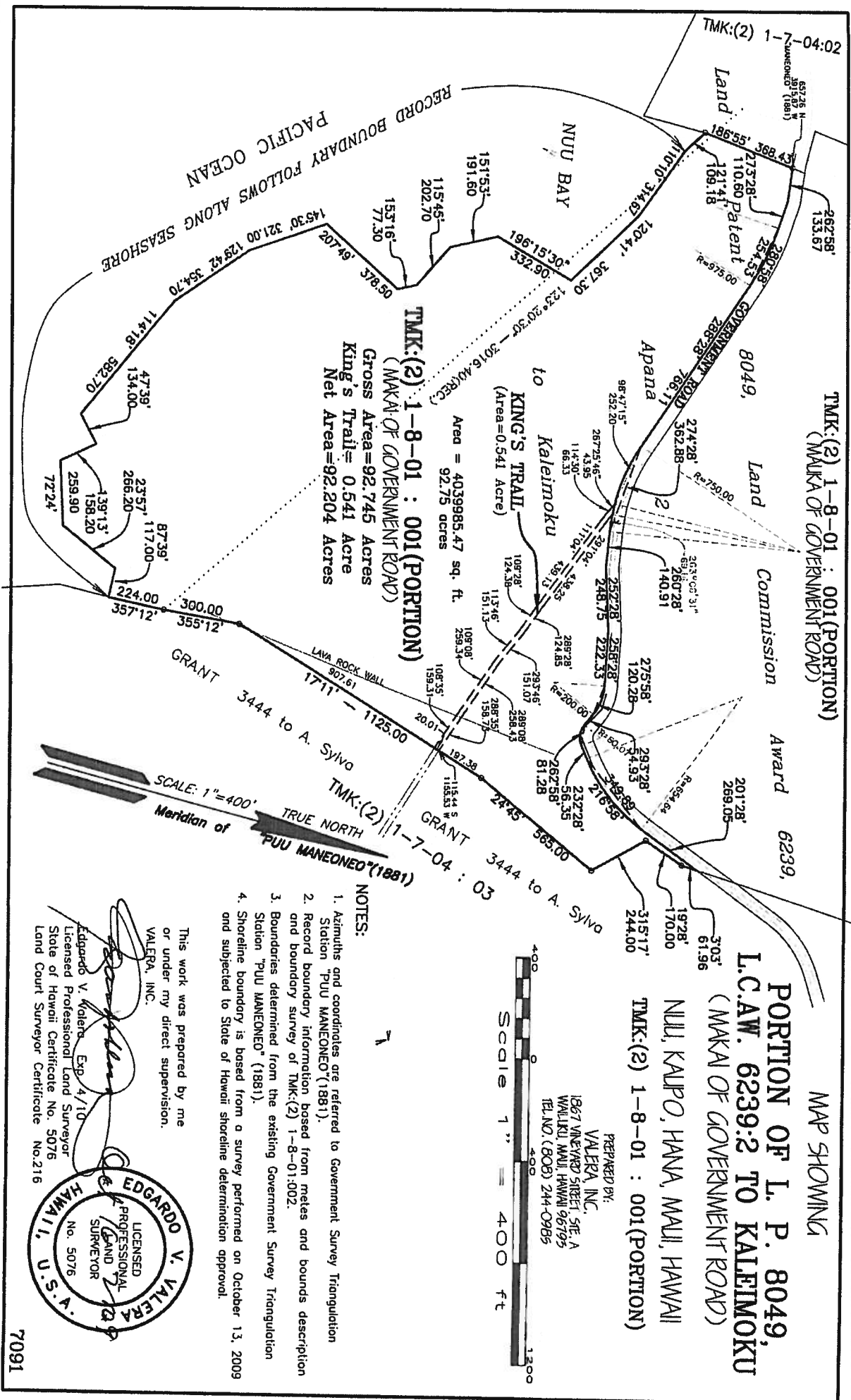
**Kaupo Ranch, Ltd., Owner**

Item #	Document Number	Document/Map Description	Grantor	Grantee	Locality	Area	TMK	Conveyance Description
1		Grant 2101	Hawaiian Kingdom	Piliwaka	Kou	1.38 ac	1-7-004-003 portion	Existing Separate Grant
2		Grant 3491 (portion)	Hawaiian Kingdom	W. Hutch	Kou	80 ac approx	1-7-004-003 portion	Remnant created by Government Road
3		Grant 3491 (portion)	Hawaiian Kingdom	W. Hutch	Kou	19.5 ac approx	1-7-004-003 portion	Remnant created by Government Road
4		Grant 3491 (portion)	Hawaiian Kingdom	W. Hutch	Kou	0.5 ac approx	1-7-004-003 portion	Remnant created by Government Road
5		Grant 3444 (portion)	Hawaiian Kingdom	A. Sylva	Puu Maneoneo	10.3 ac approx	1-7-004-003 portion	Remnant created by Government Road
6		Grant 3444 (portion)	Hawaiian Kingdom	A. Sylva	Puu Maneoneo	35.4 ac approx	1-7-004-003 portion	Remnant created by Government Road
7		Grant 3444 (portion)	Hawaiian Kingdom	A. Sylva	Puu Maneoneo	10.9 ac approx	1-7-004-003 portion	Remnant created by Government Road
8		Grant 2468.2 (portion)	Hawaiian Kingdom	Kekahuna-aoie	Puu Maneoneo	2.96 ac approx	1-7-004-003 portion	Remnant created by Government Road

9		Grant 2468:1 (portion)	Hawaiian Kingdom	Kekahuna- ai'ole	Puu Maneoneo	40.00 ac	1-7-004-003 portion	Existing Separate Grant
10		Patent 8049 LCAw 6239:2 (portion)	Republic of Hawaii	Kaleimoku	Nu'u	9.8 ac approx.	1-8-001-001 portion	Remnant created by Government Road
11		Patent 8049 LCAw 6239:2 (portion)	Republic of Hawaii	Kaleimoku	Nu'u	0.25 ac approx.	1-8-001-001 portion	Remnant created by Government Road
12		Patent 8049 LCAw 6239:2 (portion)	Republic of Hawaii	Kaleimoku	Nu'u	68.6 ac approx.	1-8-001-001 portion	Remnant created by Government Road
13		Patent 8049 LCAw 6239:2 (portion)	Republic of Hawaii	Kaleimoku	Nu'u	2643 ac approx.	1-8-001-001 portion	Remnant created by Government Road
14		Grant 3444 (portion)	Hawaiian Kingdom	A. Sylva	Puu Maneoneo	26.9 ac approx.	1-7-004-003 portion	Remnant created by Government Road
15		Grant 2468:2 (portion)	Hawaiian Kingdom	Kekahuna- ai'ole	Puu Maneoneo	57.1 ac approx.	1-7-004-003 portion	Remnant created by Government Road
16		Grant 3444 (portion)	Hawaiian Kingdom	A. Sylva	Puu Maneoneo	31.2 ac approx.	1-7-004-003 portion	Remnant created by Government Road







**PRELIMINARY REPORT**  
(No Liability Hereunder)

This report (and any revisions thereto) is issued solely for the convenience of the titleholder, the titleholder's agent, counsel, purchaser or mortgagee, or the person ordering it for the purpose of facilitating the issuance of a policy of title insurance by Title Guaranty of Hawaii and no liability will arise under this report.

-----  
**SCHEDULE A**

Title Guaranty of Hawaii, Incorporated, hereby reports that, subject to those matters set forth in Schedule "B" hereof, the title to the estate or interest to the land described in Schedule "C" hereof is vested in:

KAUPO RANCH, LTD.,  
a Hawaii corporation,  
as Fee Owner

This report is dated as of January 21, 2010 at 8:00 a.m.

Inquiries concerning this report  
should be directed to  
DARLEEN OSHIRO.  
Email doshiro@tghawaii.com.  
Fax (808) 521-0287.  
Telephone (808) 533-5810.  
Refer to Order No. 200822923.

Inquiries concerning Escrow  
should be directed to  
MARY JO CABRAL.  
KAHULUI OFFICE  
Email mcabral@tghawaii.com.  
Fax (808) 871-2222.  
Telephone (808) 871-2209.  
Escrow No. A82040512

**SCHEDULE B  
EXCEPTIONS**

1. Real Property Taxes, if any, that may be due and owing.

Tax Key: (2) 1-8-001-001      Area Assessed: 2,653.420 acres

- A. Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.
- B. The Office of the Tax Assessor has indicated that the Tax Key for the Fiscal Year 2010 - 2011 will be having an area of 81.447 acres.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.
4. Petroglyphs and salt pond as shown on Tax Map.
5. MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT AND ASSIGNMENT OF RENTS

MORTGAGOR : KAUPU RANCH, LTD., a Hawaii corporation

MORTGAGEE : FEDERAL LAND BANK ASSOCIATION OF HAWAII, FLCA, a federally chartered instrumentality under the Farm Credit Act of 1971, as amended

DATED : October 3, 2007

RECORDED : Document No. 2007-185218

AMOUNT : \$3,008,500.00 - covers portion of the land described herein, besides other lands

SCHEDULE B CONTINUED

6. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
7. Any unrecorded leases and matters arising from or affecting the same.
8. Encroachments or any other matters which a correct survey or archaeological study would disclose.

**END OF SCHEDULE B**

## SCHEDULE C

All of that certain parcel of land known as the land makai of Government Road (Piilani Highway) and King's Trail, being a portion of Land Patent 8049, Land Commission Award 6239, Apana 2 to Kaleimoku, situate at Nuu, Kaupo, Hana, Island and County of Maui, State of Hawaii, and more particularly described as follows:

BEGINNING at a 1/2 inch pipe at the northwesterly corner of this parcel of land and along the south side of Government Road (Piilani Highway), the coordinates of said point of beginning being

north 657.26 feet  
west 3,915.87 feet

referred to Government Survey Triangulation Station "MANEONEO 1881" and running by azimuths measured clockwise from true South (meridian of said "MANEONEO 1881"); thence

1. 262° 58' 133.67 feet along the south side of Government Road (Piilani Highway) to a point; thence,
2. 273° 28' 110.60 feet along the same to a point; thence,
3. Along the same on a curve to the right with a radius of 975.00 feet and a central angle of 15° 00', the chord azimuth and distance being  
280° 58' 254.53 feet to a point; thence,
4. 288° 28' 766.11 feet along the same to a point; thence,
5. Along the same on a curve to the left with a radius of 750.00 feet and a central angle of 9° 40' 45", the chord azimuth and distance being  
278° 47' 15 252.20 feet to a point, thence,
6. 294° 30' 66.33 feet along King's Trail to a point; thence,
7. 291° 04' 439.13 feet along the same to a point; thence,

# SCHEDULE C CONTINUED

8.	289° 28'	124.38	feet along the same to a point; thence,
9.	293° 46'	151.13	feet along the same to a point; thence,
10.	289° 08'	259.34	feet along the same to a point; thence,
11.	288° 35'	159.31	feet along the same to a point; thence,
12.	17° 11'	907.61	feet along Grant 3444 to A. Sylva to a "PK Nail" on rock builder; thence
13.	355° 12'	300.00	feet along the same to a point; thence,
14.	357° 12'	224.00	feet along the same to a point along the north end of a Cove; thence,

Following the "shoreline" as marked by the high wash of waves  
and vegetation line for the next sixteen (16) courses

15.	87° 39'	117.00	feet to a point; thence,
16.	23° 57'	266.20	feet to a point; thence,
17.	72° 24'	259.90	feet to a point; thence,
18.	139° 13'	158.20	feet to a point; thence,
19.	47° 39'	134.00	feet to a point; thence,
20.	114° 18'	582.70	feet to a point; thence,
21.	129° 42'	354.70	feet to a point; thence,
22.	145° 30'	321.00	feet to a point; thence,
23.	207° 49'	378.50	feet to a point; thence,
24.	153° 16'	77.30	feet to a point; thence,
25.	115° 45'	202.70	feet to a point; thence,

SCHEDULE C CONTINUED

26.	151° 53'	191.60	feet to a point; thence,
27.	196° 15' 30"	332.90	feet to a point; thence,
28.	120° 41'	367.30	feet to a point; thence,
29.	110° 10'	314.67	feet to a point; thence,
30.	121° 41'	109.18	feet to a point; thence,
31.	186° 55'	368.43	feet along the remainder of Land Patent 8049, Land Commission Award 6239, Apana 2 to Kaleimoku to the point of beginning and containing an area of 81.447 acres, more or less.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : DWIGHT H. BALDWIN, husband of Dagmar Waal Cleghorn  
Baldwin

GRANTEE : KAUPU RANCH, LTD., a Hawaii corporation

DATED : July 1, 1957

RECORDED : Liber 0012 Page 383

**END OF SCHEDULE C**



## **GENERAL NOTES**

1. Title Guaranty of Hawaii, Incorporated, finds no liens docketed against MAUI COASTAL LAND TRUST, the proposed purchaser(s).

## GUIDELINES FOR THE ISSUANCE OF INSURANCE

- A. Taxes shown in Schedule B are as of the date such information is available from the taxing authority. Evidence of payment of all taxes and assessments subsequent to such date must be provided prior to recordation.
- B. Evidence of authority regarding the execution of all documents pertaining to the transaction is required prior to recordation. This includes corporate resolutions, copies of partnership agreements, powers of attorney and trust instruments.
- C. If an entity (corporation, partnership, limited liability company, etc.) is not registered in Hawaii, evidence of its formation and existence under the laws where such entity is formed must be presented prior to recordation.
- D. If the transaction involves a construction loan, the following is required:
  - (1) a letter confirming that there is no construction prior to recordation; or
  - (2) if there is such construction, appropriate indemnity agreements, financial statements and other relevant information from the owner, developer, general contractor and major sub-contractors must be submitted to the Title Company for approval at least one week prior to the anticipated date of recordation.

Forms are available upon request from Title Guaranty of Hawaii.

- E. Chapter 669, Hawaii Revised Statutes, sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of real property. If your survey map shows a position discrepancy that falls within the tolerances of Chapter 669, call your title officer as affirmative coverage may be available to insured lenders.
- F. The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in connection with this transaction.
- G. If a policy of title insurance is issued, it will exclude from coverage all matters set forth in Schedule B of this report and in the printed Exclusions from Coverage contained in an ALTA policy or in the Hawaii Standard Owner's Policy, as applicable. Different forms may have different exclusions and should be reviewed. Copies of the policy forms are available upon request from Title Guaranty of Hawaii or on our website at [www.tghawaii.com](http://www.tghawaii.com).

DATE PRINTED: 1/28/2010

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

NAME OF OWNER: NUU MAUKA LLC

LEASED TO :

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.  
(2) 1 8 001 001 0000

CLASS: 6,5 AREA ASSESSED: 2653.420 AC

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2009

The records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	0	
EXEMPTION	\$	0	
NET VALUE	\$	0	
LAND	\$	520,800	AGRICULTURAL USE VALUE
EXEMPTION	\$	0	
NET VALUE	\$	520,800	
TOTAL NET VALUE	\$	520,800	

Installment (1 - due 8/20; 2 - due 2/20) Tax Info As Of - 9/30/2009

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2009	2	1,235.25				1,235.25	PAID
2009	1	1,235.25				1,235.25	PAID
2008	2	1,235.25				1,235.25	PAID
2008	1	1,235.25				1,235.25	PAID

DATE PRINTED: 1/28/2010

CLASS BREAKDOWN FOR TAX MAP KEY BELOW:

	DIVISION	ZONE	SECTION	PLAT	PARCEL	HPR NO.
	(2)	1	8	001	001	0000
CLASS: 6			AREA ASSESSED:			600.700 AC
	BUILDING		\$		0	
	EXEMPTION		\$		0	
	NET VALUE		\$		0	
	LAND		\$	507,600	AGRICULTURAL USE VALUE	
	EXEMPTION		\$		0	
	NET VALUE		\$	507,600		
	TOTAL NET VALUE		\$	507,600		

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	DIVISION	ZONE	SECTION	PLAT	PARCEL	HPR NO.
	(2)	1	8	001	001	0000
CLASS: 5			AREA ASSESSED:			2052.720 AC
	BUILDING		\$		0	
	EXEMPTION		\$		0	
	NET VALUE		\$		0	
	LAND		\$	13,200	AGRICULTURAL USE VALUE	
	EXEMPTION		\$		0	
	NET VALUE		\$	13,200		
	TOTAL NET VALUE		\$	13,200		

**STATE OF HAWAII  
LEGACY LAND CONSERVATION PROGRAM  
GRANT AGREEMENT**

This Agreement, entered into on June 30, 20 08, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the Maui Coastal Land Trust ("AWARDEE"), a nonprofit corporation under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: POB 965, WAILUKU HI 1, 96793 99-0353223.

W 40486696-01

**EXHIBITS**

Exhibit A      Project Application

Exhibit B      Checklist for Legacy Land Conservation Program Projects

Exhibits A and B are hereby made a part of this Agreement.

**RECITALS**

WHEREAS, Chapter 173A, Hawaii Revised Statutes ("HRS"), establishes standards for disbursing public funds to state agencies, counties, and nonprofit land conservation organizations to fulfill public purposes;

WHEREAS, the AWARDEE has requested funding from the STATE for the project described in Exhibit A and Attachment 1 of this Agreement;

WHEREAS, the STATE finds that the AWARDEE's performance as described in Attachment 1 of this Agreement will fulfill the public purpose set forth therein;

WHEREAS, the STATE desires to contract with the AWARDEE to fulfill the specified public purpose, and the AWARDEE is agreeable to performing under this Agreement;

WHEREAS, money is available to fund this Agreement pursuant to: Chapter 173A, HRS, LNR 101 (S-08-317-514) in the following maximum amount: Nine Hundred and Ninety-four Thousand, Seven Hundred and Twenty-four and No/100 Dollars (\$994,724.00);

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the AWARDEE agree as follows:

**A. SCOPE OF PERFORMANCE**

The Awardee shall perform, in a proper and satisfactory manner as determined by the STATE, the project described in the "Scope of Performance" set forth in Attachment 1, which is hereby made a part of this Agreement.

**B. TIME OF PERFORMANCE**

The performance required of the Awardee under this Agreement shall be completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

**C. COMPENSATION**

The Awardee shall be compensated for performance of the project under this Agreement according to the "Compensation and Payment Schedule," set forth in Attachment 3, which is hereby made a part of this Agreement.

**D. STANDARDS OF CONDUCT DECLARATION**

The "Standards of Conduct Declaration" by Awardee, set forth in Attachment 4, is hereby made a part of this Agreement.

**E. OTHER TERMS AND CONDITIONS**

The "General Conditions for Legacy Land Conservation Program Grant Agreements," set forth in Attachment 5, is hereby made a part of this Agreement.

IN WITNESS WHEREOF, the STATE and the Awardee have executed this Agreement effective as of the date first above written.

STATE

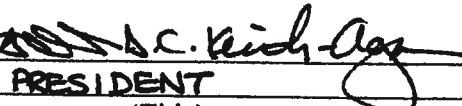
  
Chairperson

Board of Land and Natural Resources


AWARDEE

By

Its

  
PRESIDENT \*

(Title)

  
EXECUTIVE DIRECTOR

APPROVED AS TO FORM:

  
Deputy Attorney General

\*Evidence of authority of the Awardee's representative to sign this Agreement for the Awardee must be attached.

AWARDEE'S ACKNOWLEDGMENT

STATE OF HAWAII )  
COUNTY OF Mau ) SS.

On this 10<sup>th</sup> day of July, 2008, before me personally appeared GILBERT S.C. KEITH-AGARAN to me personally known, who being by me duly sworn, did say that he/she is the PRESIDENT of THE MAUI COASTAL LANDS TRUST, the AWARDEE named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the AWARDEE, and acknowledges that he/she executes said instrument as the free act and deed of the AWARDEE. This 38-page State of Hawaii Legacy Land Conservation Program Grant Agreement, dated June 30, 2008, was subscribed and sworn to before me this 10<sup>th</sup> day of July, 2008, in the Second Circuit of the State of Hawaii, by Gilbert S.C. Keith-Agaran  
Trina M. Napaepae (N.P.)  
KLA



Trina M. Napaepae  
Notary Public, State of Hawaii  
Trina M. Napaepae  
My commission expires: 10/2/2009

AWARDEE'S ACKNOWLEDGMENT

STATE OF HAWAII )

COUNTY OF Maui )

SS.

On this 10<sup>th</sup> day of July, 2008, before me personally appeared DALE B. BONAR, to me personally known, who being by me duly sworn, did say that he/she is the EXECUTIVE DIRECTOR of MAUI COASTAL LAND TRUST, the AWARDEE named in the foregoing instrument, and that ~~he~~she is authorized to sign said instrument on behalf of the AWARDEE, and acknowledges that ~~he~~she executes said instrument as the free act and deed of the AWARDEE. This 38-page State of Hawaii Legacy Land Conservation Program Grant Agreement, dated June 30, 2008, was subscribed and sworn to before me this 10<sup>th</sup> day of July, 2008, in the Second Circuit of the State of Hawaii, by Dale B. Bonar.



Trina M. Napaepae

Notary Public, State of Hawaii

Trina M. Napaepae

My commission expires: 10/2/2009



## SCOPE OF PERFORMANCE

### **Project Description**

The AWARDEE shall use funds from the Legacy Land Conservation Program ("LLCP") for land acquisition of: 128 acres, more or less, in Nu'u Makai, southeast shore, Island of Maui ("Property") for the protection of resource values stated in Sections "A," "D," and "F" of the Project Application attached hereto as Exhibit A. Property acquired with LLCP funding from the Land Conservation Fund shall be held and managed in a manner designed to protect the Property's resource values.

### **Performance**

The AWARDEE is required to do the following:

1. Submit a request for payment containing all documentation required in Attachment 3 ("Compensation and Payment Schedule") to the satisfaction of the STATE.
2. Complete acquisition of the Property and record a document of conveyance of the Property to AWARDEE.
3. The document of conveyance to AWARDEE shall include the following paragraphs:

"The property has been acquired with funds from a grant by the State of Hawaii, Department of Land and Natural Resources, Legacy Land Conservation Program ("LLCP") through grant agreement number \_\_\_\_\_, dated June 30, 2008, and is subject to all of the terms and conditions of the grant agreement. Title of the property conveyed by this deed shall vest in the Maui Coastal Land Trust, subject to disposition instructions from the State of Hawaii, Department of Land and Natural Resources ("DLNR"), or its successor agencies. The property shall be managed consistently with the purposes for which it was awarded a LLCP grant and Chapter 173A, Hawaii Revised Statutes.

The Maui Coastal Land Trust, for itself, its successors and assigns, and in consideration of the LLCP grant, does hereby covenant that it shall not dispose of, encumber its title or other interests in, or convert the use of this property without the written approval of the DLNR or its successor agencies. Upon notice from Maui Coastal Land Trust that it intends to dispose of, encumber the title or other interests in, or convert the use of the property, the DLNR may:

1. Require the Maui Coastal Land Trust to place on the property, a deed restriction or covenant to protect the resource values for which the Maui Coastal Land Trust was awarded a LLCP grant, to an appropriate land

conservation organization or county, state, or federal resource conservation agency. The deed restriction or covenant shall run with the land and be recorded with the appropriate state agency.

2. Require to be placed on the property, a conservation easement or agricultural easement under Chapter 198, Hawaii Revised Statutes, to an appropriate land conservation organization or county, state, or federal resource conservation agency, that shall run with the land and be recorded with the appropriate state agency.

The Maui Coastal Land Trust further covenants that if the property is sold, leased, rented, or otherwise disposed of by the Maui Coastal Land Trust, that portion of the net proceeds (sale price less actual expenses of sale) of such sale, rental, or proceeds equal to the proportion that the state grant bears to the original cost of the property shall be paid to the State of Hawaii."

4. Cooperate with the STATE in all efforts to document the condition and status of the resource values for which the grant funds were provided.
5. Any substantive changes to the Project Application must be agreed to by the AWARDEE and the Chairperson of the Board of Land and Natural Resources in writing.
6. If AWARDEE is a county or a nonprofit land conservation organization, no LLCP funds shall be released by the STATE unless twenty-five percent (25%) of total project costs are matched by direct moneys, a combination of public and private funds, land value donation, in-kind contributions, or a combination of these sources

**TIME SCHEDULE**

This Agreement shall be in effect beginning June 30, 2008. AWARDDEE shall complete acquisition of the Property and record the conveyance no later than June 30, 2010. If any of the performances required in the Scope of Performance are not completed within the time stated, AWARDDEE may be required to return all funds previously received by it pursuant to this Agreement. The Chairperson of the Board of Land and Natural Resources may extend the time for performance of any requirement.

### COMPENSATION AND PAYMENT SCHEDULE

In full consideration of the services to be performed under this Agreement, from Chapter 173A, Hawaii Revised Statutes, and LNR 101 (S-08-317-514), the STATE and the AWARDEE agree to the following:

- a) AWARDEE's request for payment, in the form of an invoice, shall be delivered personally or sent by United States first class mail, postage prepaid to:

Legacy Land Conservation Program  
Division of Forestry and Wildlife  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 325  
Honolulu, Hawaii 96813

The request for payment must be received by the LLCPP by June 30, 2010. A maximum payment of NINE HUNDRED AND NINETY-FOUR THOUSAND, SEVEN HUNDRED AND TWENTY-FOUR AND NO/100 DOLLARS (\$994,724.00) shall be made upon:

- i. AWARDEE's completion of the Checklist for Legacy Land Conservation Program Projects attached hereto as Exhibit B;
- ii. AWARDEE's compliance with all LLCPP policies and practices;
- iii. the STATE's receipt of an original invoice and copies of all bills, invoices, receipts, and a contract of sale; and
- iv. the STATE's receipt of AWARDEE's tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service.

- b) Within thirty (30) days of acquiring the Property, but no later than July 30, 2010, AWARDEE shall submit to the STATE a copy of the recorded conveyance document transferring ownership of the 128 acres, more or less, in Nu'u Makai, southeast shore, Island of Maui to AWARDEE.

- c) The total amount awarded under this Agreement will be dependent upon the project being completed with no substantive changes to the Project Application. The amount of the award shall not be increased, but the STATE may reduce the award if the project changes in any way that the STATE deems substantial. For example, a reduction in acreage, purchase price, or fair market value may be deemed substantial and sufficient justification for a reduction in the award.

## STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Agency” means and includes the State, the legislature and its committees, all executive departments boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

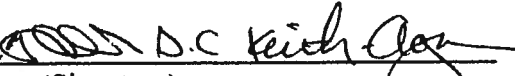
On behalf of the Maui Coastal Land Trust, AWARDEE, the undersigned does declare as follows:

1. AWARDEE ☐ is ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. AWARDEE has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Agreement within the preceding two years and who participated while so employed in the matter with which the Agreement is directly concerned. (Section 84-15(b), HRS).
3. AWARDEE has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Agreement, if the legislator or employee has been involved in the development or award of the Agreement. (Section 84-14(d), HRS).
4. AWARDEE has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Agreement. (Sections 84-18(b) and (c), HRS).

AWARDEE understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source for the declarations above.

Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

AWARDEE:

By  D.C. Keith Agar  
(Signature) GILBERT  
Print Name ~~PRESIDENT~~ S.C. KEITH-AGARIN  
PRESIDENT  
Print Title MAUL COASTAL LANDS TRUST  
Name of AWARDEE MAUL COASTAL  
LANDS TRUST  
Date 12 July 2008

**GENERAL CONDITIONS FOR LEGACY LAND  
CONSERVATION PROGRAM GRANT AGREEMENTS**

1. Awardee's Qualifying Standards.
  - a. The AWARDDEE is a state agency, county, or a nonprofit land conservation organization.
  - b. If the AWARDDEE is a non-profit land conservation organization, AWARDDEE has been determined by the Internal Revenue Service to be a non-profit organization, and AWARDDEE has a governing board whose members have no material conflict of interest and serve without compensation.
2. Recordkeeping Requirements. The AWARDDEE shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the AWARDDEE's performance under this Agreement. The AWARDDEE shall retain all records related to the AWARDDEE's performance under this Agreement for at least three (3) years after the date of submission of the AWARDDEE's Final Project Report.
3. Audit of AWARDDEE. The AWARDDEE shall allow the STATE full access to records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant. This right of access shall last as long as the records and other related documents are retained.
4. Nondiscrimination. No person performing work under this Agreement, including any employee or agent of the AWARDDEE, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Inspection of Property. The AWARDDEE shall permit the STATE and its agents and representatives, at all reasonable times, the right to enter and examine the Property to ensure compliance with chapter 173A, Hawaii Revised Statutes, and the terms of this Agreement.
6. Conflicts of Interest. The AWARDDEE represents that neither the AWARDDEE, nor any employee or agent of the AWARDDEE, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the AWARDDEE's performance under this Agreement.

7. Compliance with Laws. The AWARDDEE shall comply with chapter 173A, Hawaii Revised Statutes, chapter 343, Hawaii Revised Statutes, and all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the AWARDDEE's performance under this Agreement.
8. Indemnification and Defense. The AWARDDEE shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or in resulting from the acts or omissions of the AWARDDEE or AWARDDEE's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
9. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the AWARDDEE in connection with this Agreement, the AWARDDEE shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
10. Title insurance. AWARDDEE must obtain title insurance in the full amount of the purchase price, insuring that the title to the Property is vested in the AWARDDEE.
11. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of this Agreement, the AWARDDEE is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the AWARDDEE is in compliance with this Agreement.
  - b. The AWARDDEE and the AWARDDEE's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the AWARDDEE, and the AWARDDEE's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The AWARDDEE shall be responsible for the accuracy, completeness, and adequacy of AWARDDEE's performance under this Agreement. Furthermore, the AWARDDEE intentionally, voluntarily, and knowingly assumes the sole and entire liability to the AWARDDEE's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the AWARDDEE, or the AWARDDEE's employees or agents, in the course of their employment.



- d. The AWARDDEE shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the AWARDDEE by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, (iv) real property taxes, and (v) conveyance taxes. The AWARDDEE also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
  - e. The AWARDDEE shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The AWARDDEE shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the AWARDDEE have been paid and submit the same to the STATE prior to commencing any performance under this Agreement.
  - f. The AWARDDEE is responsible for securing all employee-related insurance coverage for the AWARDDEE and the AWARDDEE's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
12. Payment Procedures: Tax Clearance. All payments under this Agreement shall be made only upon submission by AWARDDEE of (i) original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement, and (ii) tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.

13. Publicity.

- a. The AWARDEE shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the AWARDEE's brochures, advertisements, or other publicity of the AWARDEE without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources. All media contacts with the AWARDEE about the subject matter of this Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Legacy Land Conservation Program.
- b. The AWARDEE consents to the STATE's use of AWARDEE and the Property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Legacy Land Conservation Program.

14. Confidentiality of Material.

- a. All material given to or made available to the AWARDEE by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the AWARDEE and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the AWARDEE to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes.

15. Suspension and Termination of Agreement.

- a. The STATE reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the AWARDEE. Upon receipt of said notice, the AWARDEE shall immediately comply with said notice and suspend all performance under this Agreement at the time stated.
- b. If, for any cause, the AWARDEE breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the AWARDEE's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE shall have the right to terminate this Agreement by giving written

notice to the AWARDDEE of such termination at least seven (7) calendar days before the effective date of such termination. Furthermore, the STATE may terminate this Agreement without statement of cause at any time by giving written notice to the AWARDDEE of such termination at least thirty (30) calendar days before the effective date of such termination.

- c. Upon termination of the Agreement, the AWARDDEE, within thirty (30) calendar days of the effective date of such termination, shall compile and submit in an orderly manner to the STATE an accounting of the work performed up to the date of termination. In such event, the AWARDDEE shall be paid for the actual cost of the services rendered, if any, but in no event more than the total compensation payable to the AWARDDEE under this Agreement.
  - d. If this Agreement is terminated for cause, the AWARDDEE shall not be relieved of liability to the STATE for damages sustained because of any breach by the AWARDDEE of this Agreement. In such event, the STATE may retain any amounts which may be due and owing to the AWARDDEE until such time as the exact amount of damages due to the STATE from the AWARDDEE has been determined. The STATE may also set off any damages so determined against the amounts retained.
16. Disputes. No dispute arising under this Agreement may be sued upon by the AWARDDEE until after the AWARDDEE's written request to the Chairperson of the Board of Land and Natural Resources ("CHAIRPERSON") to informally resolve the dispute is rejected, or until ninety (90) calendar days after the CHAIRPERSON's receipt of the AWARDDEE's written request whichever comes first. While the CHAIRPERSON considers the AWARDDEE's written request, the AWARDDEE agrees to proceed diligently with the performance necessary to complete the Project unless otherwise instructed in writing by the CHAIRPERSON.
17. State Remedies. The AWARDDEE understands that in the event that it no longer meets all of the standards set forth in paragraph 1 of these General Conditions, or in the event that AWARDDEE fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to AWARDDEE or may seek reimbursement for payments made to AWARDDEE under this Agreement. In addition to the remedies set forth above, the STATE shall be entitled to pursue any other remedy available at law or in equity.
18. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the AWARDDEE and the STATE.

19. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the CHAIRPERSON at the CHAIRPERSON's office in Honolulu, Hawaii or to the AWARDEE at the AWARDEE's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The AWARDEE is responsible for notifying the CHAIRPERSON in writing of any change of address.
20. Waiver. Prior to the disbursement of funds, the CHAIRPERSON, in his or her discretion, may waive certain conditions set forth in this Agreement. No waiver shall be effective unless in writing executed by the CHAIRPERSON. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the AWARDEE's obligations under the statutes.
21. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
22. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
23. Survival. AWARDEE's obligations and the STATE's remedies shall survive the funding of the grant and the acquisition of this Property by AWARDEE.
24. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the AWARDEE relative to this Agreement. This Agreement supercedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the AWARDEE other than as set forth or as referred to herein.

# **Exhibit A**

**Maui Coastal Land Trust  
Project Application**

**Legacy Land Conservation Program  
2007-2008 (Fiscal Year 2008)**



## MAUI COASTAL LAND TRUST

### Board of Directors 2007

*President*  
Helen Nielsen

*Vice President &  
Treasurer*  
Wesley Lo

*Secretary*  
Zoe Norcross-Nu'u

October 16, 2007

Ms. Molly Schmidt  
Department of Land and Natural Resources  
Legacy Land Conservation Program  
1151 Punchbowl Street, Room 325  
Honolulu, Hawai'i 96813

Dear Ms. Schmidt,

Susan Bradford  
Lucienne de Naie  
Janice Lau Fergus  
Michael Foley  
William Kama  
Kimoeko Kapahulehua  
Dave Mackwell  
George Paresa, Jr.  
Steve Still  
Hugh Starr  
Patricia Stillwell

### STAFF

*Executive Director*  
Dale B. Bonar

*Development &  
Outreach Dir.*  
Diane Lee

*Project Manager*  
Scott Fisher

*Office Manager*  
Sally Gretz

Please accept this proposal from the Maui Coastal Land Trust for the acquisition of the 78-acre Nu'u parcel. The Maui Coastal Land Trust is very excited about the prospects of acquiring this property. Our preliminary surveys of Nu'u have revealed a number of endangered species in the wetlands, including Hawaiian Stilts, Coots and Ducks. Local residents have also reported seeing Hawaiian Monk Seals and Hawaiian Hoary Bats. Additionally, Nu'u has an extensive complex of both pre and post contact Hawaiian archaeological sites. These include pictographs and petroglyphs, house sites, temporary dwellings and a canoe landing

The Maui Coastal Land Trust's goal in acquiring Nu'u will be to restore the fragile ecosystem, preserve and protect the numerous archaeological sites, educate the public about the importance of such places and to encourage respectful public use of this special site. These activities are in keeping with the Maui Coastal Land Trust's mission which is "to preserve and protect coastal lands in Maui Nui for the benefit of current and future generations." Thank you for taking the time to review this proposal, and should you have any questions, please do not hesitate to contact me.

Mahalo,

Scott Fisher  
Project Manager



**GRANT APPLICATION FORM**  
**Legacy Land Conservation Program Funding**  
**September 2007**



**Forms and Required Preliminary Documentation must be postmarked or hand delivered by October 17, 2007, 4:30 p.m. HST to (refer to Application Instructions for more information):**

Department of Land and Natural Resources  
 Legacy Land Conservation Program  
 1151 Punchbowl Street, Room 325  
 Honolulu, Hawaii 96813  
 Phone: (808) 586-0921  
 Web: [www.hawaii.gov/dlnr/dofaw/lhcp](http://www.hawaii.gov/dlnr/dofaw/lhcp)

RECEIVED  
 07 OCT 11 AM 10:57  
 FORESTRY & WILDLIFE  
 STATE OF HAWAII

**APPLICATION PACKAGE CHECKLIST (check the boxes if the following items are attached and provide an explanation if they are not):**

- ☒ Letter from current landowner acknowledging project and indicating willingness to sell.
- ☒ A general location map and a parcel map
- ☒ At least one (1), but no more than three (3) photos of the property
- ☐ Any concise and relevant appended/supplementary materials (optional)
- ☒ **FOR NONPROFIT LAND CONSERVATION ORGANIZATIONS**
  - o Copy of mission statement and
  - o IRS 501 (c) (3) or (c) (1) non-profit status determination letter
- ☐ **WHERE INTENDED HOLDER OF PROPERTY IS OTHER THAN APPLICANT:**  
 a letter from the intended holder of the property interest indicating willingness to participate

**CERTIFICATION:**

*I/We hereby certify that the statements and information contained in this Legacy Land Conservation Program Grant Application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected.*

Scott Fisher, Ph.D.

Project Manager

Name (please type)

Title

(An authorized person must sign here, such as the applicant's executive director, county commission chairperson, or State agency director.)

*Scott Fisher*  
 Signature (sign after printing)

October 16, 2007

Date

**SECTION A. APPLICANT INFORMATION**

Agency / Organization Name	Maui Coastal Land Trust
Mailing Address (PO Box or Street, City, State, Zip)	Po Box 965 Walluku, Hawai'i 96793
Contact Person and Title	Scott Fisher, Ph.D. Project Manager
Phone Numbers (best contact, work, cellular)	Cellular Phone (best contact): (808) 357-7739; Office: (808) 244-5263;
Email Address	scott@mauicoastallandtrust.org
Agency / Organization Website (include URL to any specific pages regarding this project)	www.maulcoastallandtrust.org

**SECTION B. TYPE OF ACQUISITION**

1. We are requesting funding for the acquisition of:

Fee simple interest in private land	<input checked="" type="checkbox"/>
Permanent conservation easement	<input type="checkbox"/>

2. We intend for the property interest to be held by:

State of Hawaii	<input type="checkbox"/>
County of:	<input type="checkbox"/>
Other (indicate entity)*: Maui Coastal Land Trust	<input checked="" type="checkbox"/>

\* If the intended holder of the interest is an entity other than the applicant, please supply a letter from this entity acknowledging its participation in the project.



### SECTION C. DESCRIPTION OF LAND (SUMMARY)

1. Location of property (please be as specific as possible; for example, "Moloaa, makai, located on the north shore of Kauai"):

Nu'u Makai, located on Maui's south east shore between Kanalo and Kaupo at the foot of Haleakala.

2. Tax Map Key(s) (use the following format: "(4) 5-6-007:008"):

(2) 1-8-001: 001 (portion); (2) 1-7-004: 003 (portion).

3. Size of property (indicate acreage or square footage):

128 acres

4. What types of easement(s) are located on the property? (for example: vehicular, pedestrian for beach access, utility, etc.):

DLNR, the US Fish and Wildlife Service and Kaupo Ranch have an MOA through the Partnerships For Wildlife Program.

5. Will the public have access to property or easement? ☒ Yes ☐ No

6. Please provide the following land use information:

State Land Use Designation	Conservation and Agriculture
County Zoning	Agriculture
County General /Community Plan Designation	Hana Community Plan
Flood Zone Designation	Flood Zone A

7. Is property located in a Special Management Area? ☒ Yes ☐ No

8. Please describe any structures (e.g. size, location, use, condition, etc.) on the property.

The only structure on the property is an unused, dilapidated outhouse.

9. What kinds of land uses/activities are underway on the property? Please describe the any kinds of land uses/activities are underway the subject property and on bordering properties.

Nu'u Makai is currently used for agriculture (cattle grazing) as are the adjacent lands Kaupo Ranch owns. Conservation work is taking place mauka (a private landowner) and in the expanded National Park area (west).

10. What types of surveys or documented analyses, if any, have been conducted regarding the property (e.g. environmental assessments, cultural assessments, environmental impact statements, biological field surveys, archeological surveys, Shoreline Management Area permit applications)?

Due to its rich Cultural Heritage Nu'u has been the subject of a number of cultural assessments, including: Manupau, 1922; Thrum, 1917; and Walker, 1929. Numerous Informal biological field surveys have also been conducted.

#### SECTION D. PRESERVATION PURPOSES

1. We propose that the property be acquired for the following preservation purpose(s) (check all that apply, and then provide more information regarding the preservation purposes in numbers 2 through 10 below for *checked areas only*):

Watershed protection	<input type="checkbox"/>	Parks	<input type="checkbox"/>
Coastal areas, beaches and ocean access	<input checked="" type="checkbox"/>	Natural areas	<input checked="" type="checkbox"/>
Habitat protection	<input checked="" type="checkbox"/>	Agricultural production	<input type="checkbox"/>
Cultural and historical sites	<input checked="" type="checkbox"/>	Open spaces and scenic resources	<input checked="" type="checkbox"/>
Recreational and public hunting areas	<input checked="" type="checkbox"/>		

2. Watershed Protection: Please describe the watershed function of this property: (elevation gradient, type/condition of vegetation, presence of perennial or ephemeral streams or drainage channels, other water bodies, etc.).

Nu'u Makai is a coastal parcel largely covered by non-indigenous grasses and trees. However, it also contains a 6-acre coastal palustrine discharge wetland with numerous indigenous and endemic floral and faunal species.

3. Coastal areas, beaches and ocean access: Please describe the coastal significance of this property (e.g. length of shoreline, intertidal areas, type/amount of beach, coastal strand vegetation, extent of erosion, etc.). Please describe the type and extent of ocean access.

With 5000 feet of pristine coastline, the Nu'u Makai near shore area is a critical habitat area. The geology consists of both lava escarpment and stone cobble shoreline frequented for recreational fishing.

4. Habitat Protection: Please describe the types of habitat present within the property, including the types of wildlife species that use the area and the elevation range of the property. Describe the condition of habitat, including the presence of both threatened & endangered and invasive species. Describe the size/diversity of wildlife populations. Note if the habitat is formally designated (e.g. critical habitat, wildlife refuge, etc.). Note also the condition and extent of wildlife habitat on adjacent lands.

Nu'u contains both coastal and wetland habitat. Recent studies have documented 21 species of migratory birds as well as endangered Hawaiian Coots (up to 40), Hawaiian Stilts (up to 16) and Hawaiian Ducks.

5. Cultural and historic sites: Please identify the presence, location and condition of cultural or historic structures or sites (e.g., heiau, lo'i, burial caves, dunes, or remnant walls) on the property. Identify any sites that are listed on or eligible for the National Register of Historic Places.

Nu'u Makai contains extensive cultural and historic sites. These include burial sites, petroglyphs, a Ko'a, or a fishing shrine, as well as numerous remnant walls of dwellings found throughout the property.

6. Recreational and public hunting areas: Please identify ongoing types and levels of public recreational activity on the property and describe the level of public access. Please identify the types of activities anticipated after acquisition of the property. Is public hunting currently underway on the property? Is the property within a Game Management Area?

Fishing and diving remain the most common type of public recreational activity. Upon acquisition we anticipate that legal, respectful public recreation will continue. There is currently no hunting on the property.

7. Parks: Is the parcel within or adjacent to a Federal, State or County Park? If so, please describe.

The adjacent property to the west has been purchased by the Conservation Fund and is slated for acquisition by Haleakala National Park.

8. Natural Area: Please describe the natural resources on the property (e.g. streams, estuaries, anchialine ponds, dunes, caves, forest, etc.). Is the property within or adjacent to a formally designated natural area (e.g., Natural Area Reserve, Refuge, Sanctuary, etc.)?

Nu'u contains some of the most pristine coastal wetlands (6 acres) and shoreline (5000 feet) on Maui. The immediately adjacent mauka area is managed as the Leeward Haleakala Watershed Restoration Partnership.

9. Agricultural Production: Please describe the types and extent of agricultural activities underway on the property or adjacent to the property. Note if there is a record of past agricultural activities.

From the 19th century through the late 20th century Nu'u was used for cattle production. Kaupo Ranch currently stables horses on the property and this would be discontinued upon our acquisition of the property.

10. Open spaces or scenic resources: Please describe the open space values of the property.

Is the property readily visible from surrounding and/or distant areas? Describe the view plane from the property. Does the property itself have unusual or exceptional value as a site from which to view and appreciate scenic vistas?

Nu'u is visible from distant areas, and the view plane from the property takes in the sweeping vista of the south flank of Haleakala. The view from this property is absolutely stunning.

#### SECTION E. ENVIRONMENTAL HAZARDS

1. If there are suspected or potential hazards associated on or related to this property, please check all the following that apply and describe each:

There are no known hazards.	<input checked="" type="checkbox"/>
The property is a designated brownfield (former industrial use)	<input type="checkbox"/>
There has been illegal dumping /hazardous materials.	<input type="checkbox"/>
The property is prone to flooding or is a natural drainage basin.	<input type="checkbox"/>
The property is prone to falling rocks or mudslides.	<input type="checkbox"/>
The property lays fallow/overgrown and ground is not level (rocky)	<input checked="" type="checkbox"/>
Other suspected or potential hazards:	<input type="checkbox"/>

#### SECTION F. FUNDING REQUEST

1. What is the fair market value of the fee simple property?

\$ 6,000,000

2. What is the fair market value of the conservation / agricultural easement?

\$ N/A

3. How were the estimated values determined?

	<u>Fee Simple</u>	<u>Easement</u>
Appraisal Report (please indicate date & author of report)	\$7,000; Report is in progress by ACM Consultants.	
Current County Tax Assessed Value	Portions of TMK	
Other (please specify)		

4. Is the property or easement currently listed for sale or has it been listed for sale within the past two years?

☒ Yes. Asking price:

\$  
\$6,000,000

☐ No

5. What is the total estimated cost for acquisition? Please use the table below:

Estimated Acquisition Cost Worksheet				
Expense Item	Estimated Cost	% of Costs to be Paid by:		
		Land Owner	Applicant	Other (specify)
Appraisal report	\$7,000	100%		
Title report	\$300		100%	
Property survey	N/A			
Subdivision	N/A			
Environmental investigation	N/A			
Other:	\$4000 (title ins.)		100%	
Other:				
Other:				
Other:				
Total Estimated Acquisition	\$ \$11,300			
Estimated Value of Property	\$ \$6,000,000			
<b>TOTAL ANTICIPATED COST OF ACQUISITION</b>	<b>\$ \$6,004,300</b>	<b>%</b>	<b>%</b>	<b>%</b>

6. What are the anticipated matching funds? Please use table below:

<b>Estimated Matching Funds Worksheet</b>			
Type	\$ Amount	Source of Funds or Basis of Valuation	Status* (Secured/Pending)
Private funds			
Public/other funds	\$1,000,000	U.S. Fish and Wildlife Service	Secured
Public/other funds	\$1,790,000	U.S. Fish and Wildlife Service	Secured
Public/other funds			
Public/other funds			
Land value donation (can include bargain sale reduction in price from fair market value in this category)	2,000,000	Kaupo Ranch, Inc.	Secured
In-kind contributions			
<b>TOTAL MATCHING FUNDS</b>	<b>\$ 4,790,000</b>		
<b>AMOUNT BEING REQUESTED FROM THE LEGACY LAND PROGRAM</b>	<b>\$ 1,214,300</b>		
<b>TOTAL ANTICIPATED PROJECT FUNDING</b>	<b>\$ 6,004,300</b>		

\* Please describe the current status of any pending funds and indicate the date that any pending funds will become available if they are awarded:

All matching funds are secured through both the U.S. Fish and Wildlife Service (National Coastal Wetlands Conservation Grant Program and the Recovery Lands Act)) as well as the Kaupo Ranch partners.

7. Please provide an estimated timeline for acquisition (note that funding will expire two years from date of award agreement):

Because we have secured funding of everything except what we are asking for from the Legacy Land Conservation program, if the funds are granted we anticipate finalizing the purchase of Nu'u within approximately three months following the granting of these funds. This will allow us the time to finalize any outstanding issues related to the land acquisition.

#### **SECTION G. PROJECT DESCRIPTION**

Please attach answers to the questions below on a separate sheet and attach it to the application form. Make sure to number your answers so they correlate with the numbered questions below. Please limit the length of your answers to Questions 1 and 2 to one single-spaced page, Times New Roman 12-point font, 1 inch margins.

1. Briefly describe the overall significance and importance of the property and/or easement.
2. Identify any conditions that threaten the significance and importance of the subject site. This may include anticipated uses of neighboring lands, environmental conditions (e.g. sedimentation, runoff, invasive species, conflicting activities, etc.).

#### **SECTION H. STEWARDSHIP AND MANAGEMENT**

Please attach an answer to the question below on a separate sheet and attach it to the application form. Please limit your answer to Question 3 to one single-spaced page, Times New Roman 12-point font, 1 inch margins.

3. Briefly describe the proposed use of the acquired property or easement including any short and long term goals, resource management plan, sources of start up funding, operation and maintenance funding. Disclose any intended commercial uses. What entity (if not the applicant) will manage the property/easement? Please describe the expertise and experience of the managing entity.

**KAUPO RANCH  
1576 Halama Street  
Kihei, Maui, Hawaii 96753**

July 12, 2006

Mr. Dale B. Bonar, Executive Director  
Maui Coastal Land Trust  
P.O. Box 965  
Wailuku, Hawaii 96793

Reference: Nu'u Landing Parcels, Kaupo Ranch

Dear Dale,

I am writing to confirm our conversation regarding the acquisition of Nu'u Landing Parcels by the Maui Coastal Land Trust. As you know, the Ranch partners feel this is an exceptionally important area from a cultural, historical and environmental standpoint and we are pleased the Land Trust is working to conserve it in perpetuity.

As we discussed, the appraisal of the parcels at Nu'u have been ordered and we can finalize the purchase terms after its receipt. Upon receipt of the appraisal, the shareholders may give full consideration to a bargain sale and an additional discount.

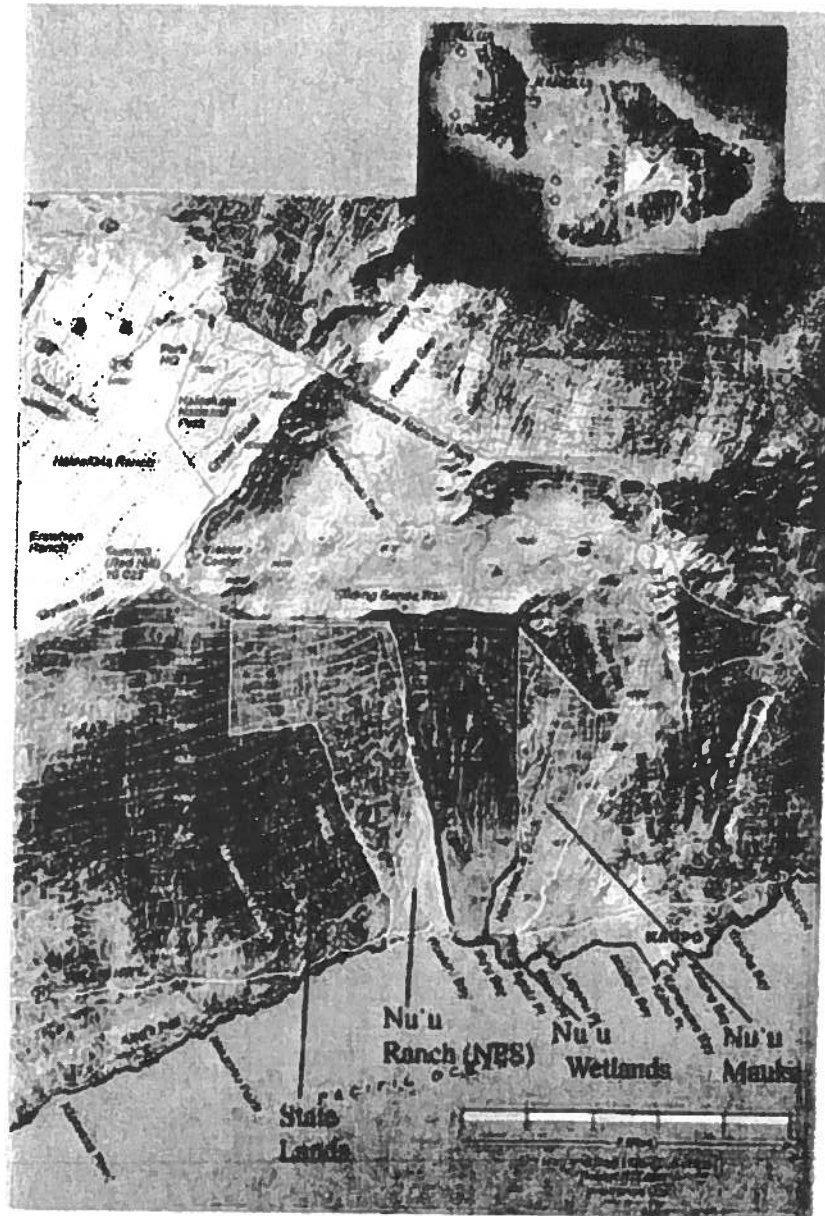
I look forward to finalizing the purchase details with you once the appraisal has arrived and will contact you at that time.

Sincerely,

  
J. Stephen Goodfellow  
Vice President



**Maui Coastal Land Trust, October 2007**



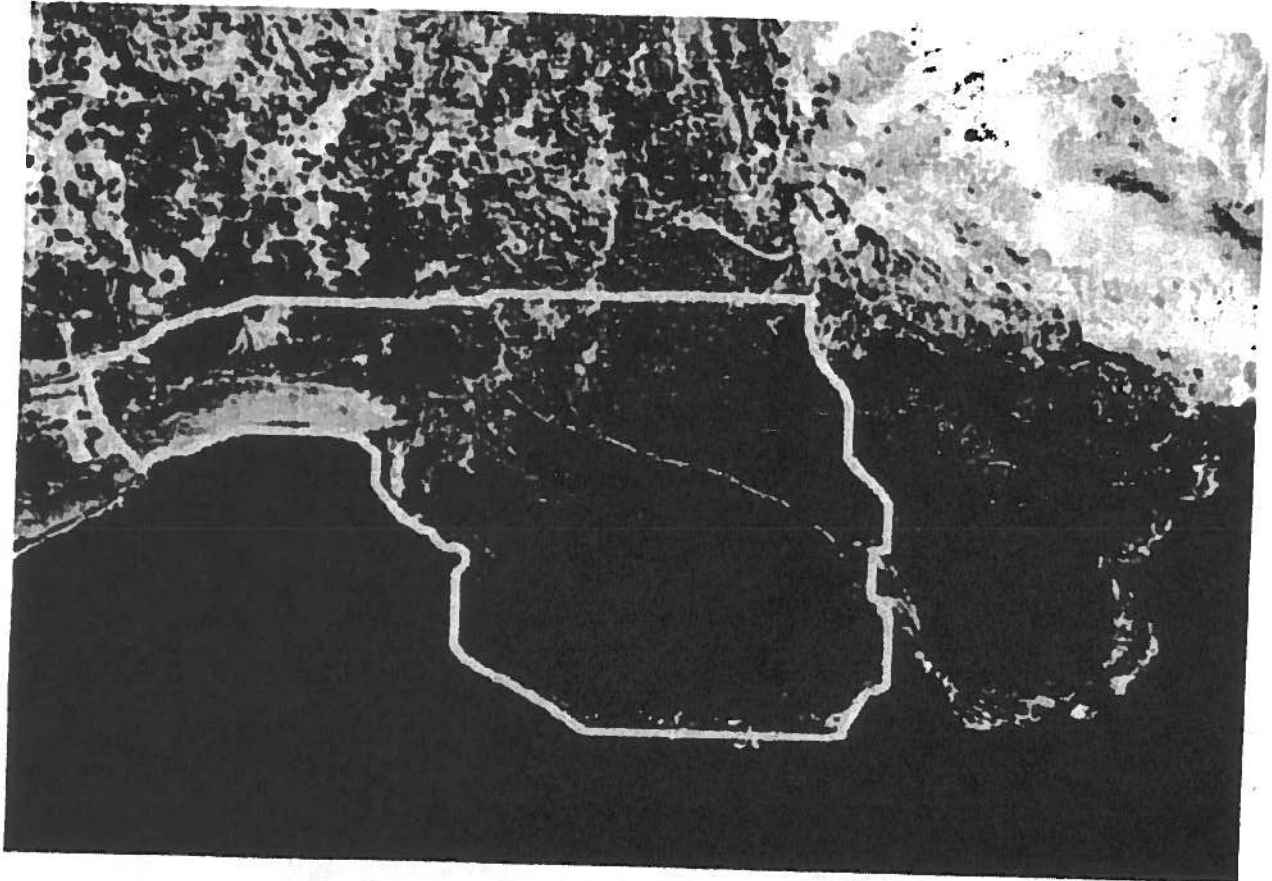
**FIGURE 1. Location Map. Property proposed for acquisition outlined in green.**

**Maui Coastal Land Trust, October 2007**



LLCF Proposal

Maui Coastal Land Trust, October 2007



**FIGURE 3. Aerial View of Nu'u Makai parcel proposed for acquisition (78 acres, outlined in yellow).**

LLCF Proposal

Maui Coastal Land Trust, October 2007

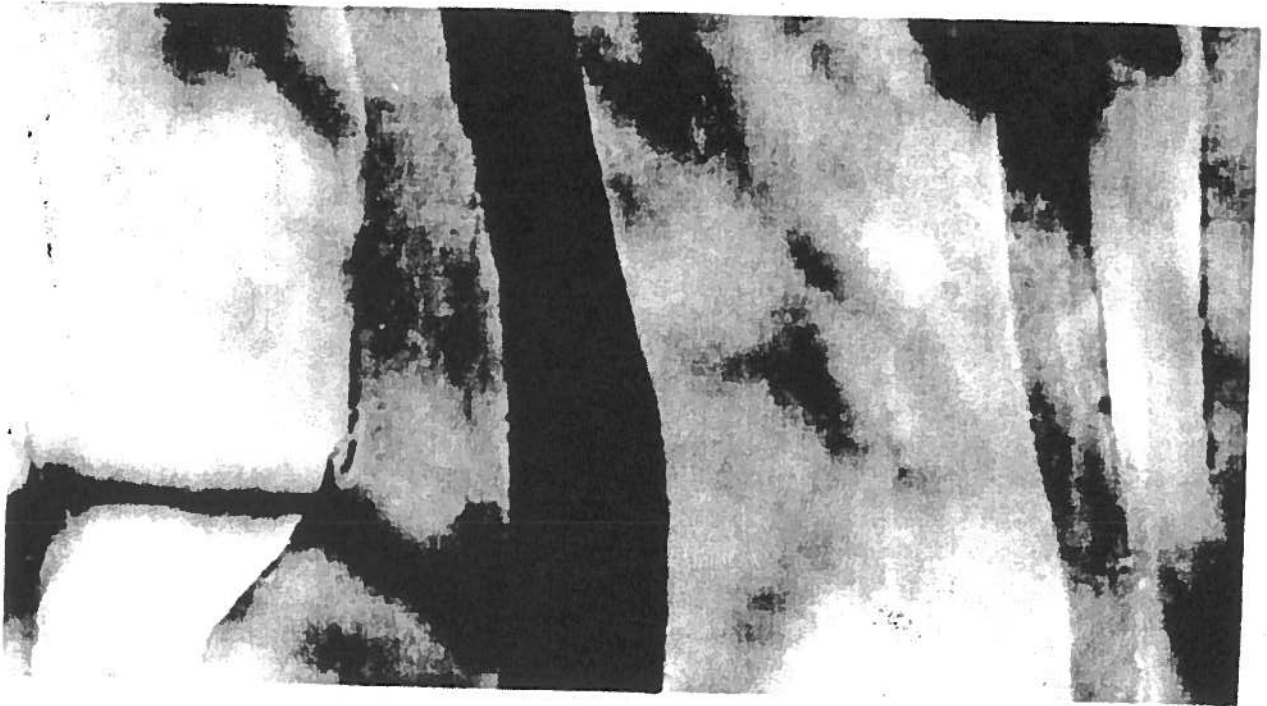


**FIGURE 4. Photograph of Nu'u Makal Wetlands (above; ca. 6 acres) and endangered Ae'o in the wetlands (below).**



LLCF Proposal

Maui Coastal Land Trust, October 2007



**FIGURE 5. Two of several petroglyphs and pictographs located on Nu`u Makai parcel proposed for acquisition.**



**MAUI COASTAL LAND TRUST**

## **Mission Statement**

**The mission of the Maui Coastal Land Trust is “to preserve and protect coastal lands in Maui Nui (Maui, Moloka’i and Lana’i) for the benefit of the natural environment and of current and future generations.**

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **JAN 26 2007**

MAUI COASTAL LAND TRUST  
PO BOX 965  
WAILUKU, HI 96793

Employer Identification Number:  
99-0353223

DLN:

17053350725036

Contact Person:

SHAWNDEA KREBS

ID# 31072

Contact Telephone Number:

(877) 829-5500

Public Charity Status:

170(b)(1)(A)(vi)

Dear Applicant:

Our letter dated March 2001, stated you would be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, and you would be treated as a public charity, rather than as a private foundation, during an advance ruling period.

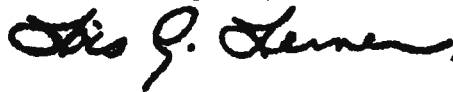
Based on the information you submitted, you are classified as a public charity under the Code section listed in the heading of this letter. Since your exempt status was not under consideration, you continue to be classified as an organization exempt from Federal income tax under section 501(c)(3) of the Code.

Publication 557, Tax-Exempt Status for Your Organization, provides detailed information about your rights and responsibilities as an exempt organization. You may request a copy by calling the toll-free number for forms, (800) 829-3676. Information is also available on our Internet Web Site at [www.irs.gov](http://www.irs.gov).

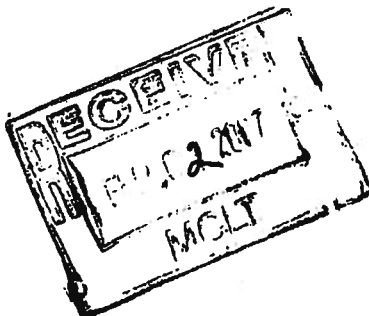
If you have general questions about exempt organizations, please call our toll-free number shown in the heading.

Please keep this letter in your permanent records.

Sincerely yours,



Lois G. Lerner  
Director, Exempt Organizations  
Rulings and Agreements



Letter 1050 (DO/CG)

## **Section F. Project Description**

**Please type your answers on a separate sheet and attach it to the application form (no more than two pages total). Make sure to number your answers so they correlate with the numbered questions below.**

- 1. Briefly describe the significance/importance of the property and/or easement (such as public use, natural areas, slope and elevation, soil type, flora and fauna, etc.).**

The significance of the Nu'u Makai parcel can be broken down into three distinct but related elements. These include ecological assets, cultural resources and public use of this area.

- Nu'u Makai contains the single largest (c. 5 acre) tract of palustrine wetland on the leeward slope of Haleakala between Makena and Kipahulu. For this reason it is extremely important habitat for both the Hawaiian stilt (*Himantopus mexicanus knudseni*) as well as the Hawaiian Coot (*Fulica alai*), which currently utilize this area, as well as a potentially important area for the reintroduction of species no longer found on Maui, such as the Hawaiian Gallinule (*Gallinula chloropus sandvicensis*). Additionally, other bird species would benefit from habitat restoration, such as the Nene (*Branta sandvicensis*) and the Hawaiian Duck, (*Anas wyvilliana*) and an array of common and less common migratory shore birds. Recently a state biologist sighted the endangered Blackburn Damselfly in the wetlands. Fee simple ownership of this property would give the Maui Coastal Land Trust an opportunity to conduct habitat restoration work and to better manage this critical area to meet the biological needs of all of these species.

The shoreline area of Nu'u Makai has been observed as a haul out area for the endangered Monk Seal. Ownership and management of this area would allow us to better meet the biological and habitat needs of all of these species. Finally, the habitat type, location and elevation provide an opportunity to replant at least five endangered floral species.

- There are numerous cultural resources at Nu'u Makai, including red-ochre petroglyphs and archaeological structures. Among these are house sites, temporary structures and an ancient canoe landing site. Because Nu'u Makai has not been proposed for development an archaeological inventory survey has not been conducted. However, the Bishop Museum, including Winslow Walker, documented a number of archaeological sites on this property as well as on the immediately adjacent lands of Nu'u ahupua'a. These documented sites are currently on the state list of historic sites, though they are frequently subject to abuse by visitors to this area.
- The public frequently uses this area for a variety of recreational uses. These include fishing, diving, camping and hiking, among others. Because of its remoteness it has become an increasingly sought after location for these activities. It is still regarded as a place one can go to "get away from it all."

- 2. Identify any conditions that threaten the significance/importance of the subject site. This may include how the property or easement relates to neighboring lands (for example, whether project will expand upon an existing conservation area, or provide open space in developed area, etc).**



Due to the remoteness of this area management up to this point has proven particularly challenging. These challenges now threaten the significant features described above.

- Invasive species and introduced predators pose the most serious threat to the health of the Nu'u Makai wetlands. These include encroachment by Hau (*Hibiscus tiliaceus*) and Kiawe (*Prosopis pallida*) which significantly disturb this delicate ecosystem. Additionally, in the past several years Cattle Egret (*Bubulcus ibis*) have colonized a portion of the wetlands. At times, we have counted over two hundred individuals in this area. This is particularly disconcerting as Cattle Egret are known predators of juvenile stilts and coots. Evidence of other predators is beginning to be seen with increasing frequency in the wetlands area. These include cats, mongoose and dogs. Habitat restoration and a more active management style in this area will be extremely beneficial to the entire ecosystem, especially the wetlands and the near shore area.
- Human generated threats are another challenge in the Nu'u Makai area. Visitors to this site have been seen on several occasions climbing on and disturbing the archaeological sites on the property. Campers also frequently leave their garbage on the property which attracts predators around the sensitive wetlands and dog tracks have been frequently seen in and near the wetlands. On one occasion, a Maui Coastal Land Trust employee witnessed the illegal use of gill nets on the property.

**3. Briefly describe the proposed use of the acquired property or easement including any short and long term goals, resource management plan, the source of operation and maintenance funding and who (if not the applicant) will manage the property/easement.**

The Maui Coastal Land Trust proposes to acquire this property in fee simple to conduct habitat restoration work in the wetlands, permanently protect from human disturbance the numerous archaeological sites, and educate the public of the need to preserve and protect such sites in perpetuity. We would begin by doing a comprehensive site evaluation, working very closely with the Kaupo community, drafting a management plan which reflects the need to both protect and restore this fragile ecosystem and takes into account the community's values and vision. In order to secure funding for this project we would solicit funds from both private and public sources. Our private source of funding comes through our efforts to reach out to the community and inform them of the need to conserve in perpetuity Maui's coastal properties. Public funding will come through such agencies as the National Oceanic and Atmospheric Administration (NOAA), the US Fish and Wildlife Service and the Natural Resources Conservation Service. We have worked successfully with each of these agencies in the past, particularly at the Maui Coastal Land Trust's 277-acre Waihe'e Coastal Dunes and Wetlands Refuge.

## **Exhibit B**

### **Checklist for Legacy Land Conservation Program Projects**

FOR NONPROFIT AND COUNTY GRANTEES: The following items must be completed to the STATE's satisfaction prior to the final award:

- ☐ **Title report review and appraisal certification.** A current title report of the property interest to be acquired must be obtained and approved through the Department of Land and Natural Resources, Land Division ("LD"). An appraisal of the property interest to be acquired must be done and certification obtained through LD, with final approval by the Chairperson of the Board of Land and Natural Resources. AWARDDEE shall first supply LD a current title report, then contact the LD Appraisal Manager regarding certification requirements prior to issuing appraisal instructions for a new appraisal or ordering an update of a pre-existing appraisal.
- ☐ **Matching funds.** Evidence of matching funds, as required by law, must be provided to LLCP.
- ☐ **Escrow.** Funds that are to be used for the purchase of property will be deposited directly into escrow by LLCP.
- ☐ **Title insurance.** As of the 2008-2009 (Fiscal Year 2008) grant cycle, AWARDEES must obtain title insurance in the full amount of the purchase price, insuring that the title to the Property is vested in the AWARDDEE.
- ☐ **Accounting.** AWARDDEE must provide an accounting of all LLCP grant funds to be expended, evidenced by supporting documentation.
- ☐ **ESA.** One or more Environmental Site Assessment(s) (ESA) as may be required by STATE.
- ☐ **HRS Ch. 343 compliance.** An Environmental Assessment and/or Cultural Assessment as may be required by law.
- ☐ **Resource value documentation.** AWARDDEE shall submit a written statement and photographs that reflect the current status and condition of the resources for which the land is to be protected. The statement shall be certified by AWARDDEE and the photographs shall be taken from identifiable locations on the Property.
- ☐ **Deed.** AWARDDEE shall submit a copy of proposed deed prior to execution of deed for review and approval by STATE.



## MAUI COASTAL LAND TRUST

### **Board of Directors 2008**

*President*  
Gilbert Keith-Agaran

*Vice President*  
Wesley Lo

*Treasurer*  
Janice Lau

*Secretary*  
Helen Nielsen

Susan Bradford

Lucienne de Naie

Michael Foley

William Kamai

Janet Lau

Kimokeo Kapahulehua

Dave Mackwell

Judy Mc Corkle

George Paresa

Jennifer Sabas

Steve Still

Hugh Starr

Patricia Stillwell

### **STAFF**

*Executive Director*  
Dale B. Bonar

*Development and  
Outreach Director*  
Diane Lee

*Project Manager*  
Scott Fisher

*Office Manager*  
Sally Gretz

*Land Steward*  
James Crowe

July 8, 2008

### **Evidence of Authority of Representatives**

I, Helen Nielsen, Secretary of Maui Coastal Land Trust, a Hawai'i nonprofit corporation, hereinafter referred to as the "Corporation", do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of the Corporation at its meeting duly called and held at the offices of the Corporation on the 26th day of September 2002, at which a quorum was present and acting throughout and that said resolution has not been modified, amended or rescinded and continues in force and effect (From Corporation Articles of Incorporation, as amended, September 26, 2002):

### **ARTICLE 10. EXECUTION OF INSTRUMENTS**

#### **Section 0.1 Proper Officers**

Except as hereinafter provided or as required by law, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts, bills of exchange, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, mortgages and other instruments or writings of any nature, which require execution on behalf of the Corporation, shall be signed by two different persons who are officers of the corporation, with the exception that checks in the amount of up to \$1,000 may be signed by one officer. Officers are not authorized to make any expenditure of \$1,000 or greater without express Board approval of such expenditure. The Board of Directors may from time to time authorize any such documents, instruments or writings to be signed by such Officers, agents or employees of the Corporation, or any one of them, in such manner as the Board of Directors may determine.

The names and addresses of current officers of the Corporation  
are:



President Gil Keith-Agaran  
24 N. Church St., Suite 409  
Wailuku, HI 96793

Vice President Wesley Lo  
1367 Ho`olako St.  
Wailuku, HI 96793

Treasurer Janice Lau Fergus  
POBox 1649  
Makawao, HI 96768

Secretary Helen Nielsen  
1942 Main Street, #104  
Waiuku, HI 96793

Executive Director Dale B. Bonar  
POB 880627  
Pukalani, HI 96788

IN WITNESS WHEREOF, I have hereunto set my hand the 10<sup>th</sup> day of July, 2008.

A handwritten signature in cursive script, appearing to read "Helen Nielsen", is written over a solid horizontal line.

Helen Nielsen, Secretary

FORM A-8  
(REV. 2006)STATE OF HAWAII — DEPARTMENT OF TAXATION  
**TAX CLEARANCE APPLICATION**  
PLEASE TYPE OR PRINT CLEARLY**1. APPLICANT INFORMATION:** (PLEASE PRINT CLEARLY)Applicant's Name Maui Coastal Land TrustAddress P.O. Box 965City/State/Zip Code Wailuku, HI 96793

DBA/Trade Name \_\_\_\_\_

**2. TAX IDENTIFICATION NUMBER(S):** (Complete applicable ID numbers)HAWAII TAX ID # WFEDERAL EMPLOYER ID # 99-0353223  
(FEIN)

SOCIAL SECURITY #(SSN) \_\_\_\_\_

**3. APPLICANT IS A/AN:** (CHECK ONLY ONE BOX)

- ☐ CORPORATION                      ☐ S CORPORATION                      ☒ TAX EXEMPT ORGANIZATION  
☐ INDIVIDUAL                              ☐ PARTNERSHIP                      ☐ ESTATE                      ☐ TRUST  
☐ LIMITED LIABILITY COMPANY              ☐ LIMITED LIABILITY PARTNERSHIP  
☐ Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN \_\_\_\_\_  
☐ Subsidiary Corporation; enter parent corporation's name and FEIN \_\_\_\_\_

**4. THE TAX CLEARANCE IS REQUIRED FOR:**

- ☒ CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII \*      ☐ LIQUOR LICENSE \*  
☐ REAL ESTATE LICENSE                      ☐ CONTRACTOR LICENSE                      ☐ BULK SALES\*\*  
☐ FINANCIAL CLOSING                      ☐ PROGRESS PAYMENT                      ☐ PERSONAL  
☐ HAWAII STATE RESIDENCY                      ☐ FEDERAL CONTRACT                      ☐ LOAN  
☐ SUBCONTRACT                      ☒ OTHER State Grant

\* IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.

\*\* ATTACH FORM G-8A, REPORT OF BULK SALE OR TRANSFER

**5. NO. OF CERTIFIED COPIES REQUESTED:****5****6. SIGNATURE:**DALE B. BONAR  
PRINT NAME[Signature]  
SIGNATUREEXECUTIVE DIRECTOR

PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor

5/21/08  
DATE(808) 244-5263  
TELEPHONE(808) 242-4741  
FAX

**POWER OF ATTORNEY.** If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required. Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.

**PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.**

SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

FOR OFFICE USE ONLY	
BUSINESS START DATE IN HAWAII IF APPLICABLE <u>02/03/2001</u>	
HAWAII RETURNS FILED IF APPLICABLE 20____ 20____ 20____	
STATE OF HAWAII DEPARTMENT OF TAXATION <b>APPROVED</b> <u>[Signature]</u> MAY 28 2008 per _____ Department of Taxation	
*IRS APPROVAL STAMP INTERNAL REVENUE SERVICE <b>APPROVED</b> JUN 02 2008 per <u>[Signature]</u> W & I Wailuku	
CERTIFIED COPY STAMP W & I WAILUKU This copy is acceptable as a substitute for the original tax clearance certificate issued. <u>[Signature]</u> Internal Revenue Service	

FORM LIR#27  
(Rev. 11/09/04)

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR

1. APPLICANT INFORMATION: (Please Type or Print Clearly)

\*Applicant's Business Name Maui Coastal Land Trust  
Address P.O. Box 965  
City/State/Zip Code Wailuku, HI 96793  
DBA/Trade Name \_\_\_\_\_  
\* Business name must be the same name submitted with the applicant's bid or proposal.

2. IDENTIFICATION NUMBER(S): (Complete Applicable ID Numbers)

State Department of Labor  
Unemployment Insurance ID# 10/0/0/7/1/3/3/2/2/7/  
Federal Employer ID# (FEIN) 17903532231

3. EMPLOYERS: If you do not have a State Department of Labor Unemployment Insurance ID#, please answer the following question(s):

Do you currently have employees working in the State of Hawaii?

☐ YES ☐ NO

Do you plan to have employees work in the State of Hawaii?

☐ YES ☐ NO

SEE PAGE 2 FOR FILING INSTRUCTIONS. Failure to provide above required information on this application will result in a denial of this request. Unsigned applications will not be processed.

4. SIGNATURE:

Dale B. Bonner  
PRINT NAME  
\_\_\_\_\_  
SIGNATURE

Executive Director  
PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee.  
6/06/08 808-244-5263 808-242-4741  
DATE TELEPHONE FAX

NOTE: If this application is stamped "PENDING", another LIR#27 must be submitted when employees are performing services in the State to determine compliance with the State of Hawaii labor laws. Approval constitutes a certificate of compliance with labor laws based on information available to the Department as of the approval date.

FOR OFFICIAL USE ONLY	
BUSINESS START DATE IN HAWAII IF APPLICABLE	
DLIR Log No	<u>83280</u>
Date Received	<u>7/7/08</u>
Department of Labor and Industrial Relations	
Approval Stamp APPROVED	
<u>Dale B. Bonner</u> Administrator	
Initials	Date
<u>DB</u>	<u>7/7/08</u>

This certificate is valid for SIX (6) MONTHS from the approval date

**STATE OF HAWAII  
AMENDMENT NO. 1  
TO LEGACY LAND CONSERVATION PROGRAM  
GRANT AGREEMENT  
(CONTRACT NO. 57553)**

This Amendment, entered into on June 24, 2010, by and between the BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII ("STATE"), by its Chairperson, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the Maui Coastal Land Trust ("AWARDEE"), a nonprofit corporation under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: P.O. Box 965, Wailuku, HI 96793; 99-0353223; W40486696-01.

**RECITALS**

A. WHEREAS, the STATE and the AWARDEE entered into a State of Hawaii Legacy Land Conservation Program Grant Agreement dated June 30, 2008, (hereinafter referred to as the "Agreement"), whereby the AWARDEE agreed to the terms described in the Agreement; and

B. WHEREAS, the parties now desire to amend the Agreement to extend the time of performance.

NOW, THEREFORE, the STATE and the AWARDEE mutually agree to amend the Agreement as follows:

The Time Schedule set forth as Attachment 2 to the Agreement is hereby amended to extend the time of performance from "AWARDEE shall complete the acquisition of the Property and record the conveyance no later than June 30, 2010," to "AWARDEE shall complete the acquisition of the Property and record the conveyance no later than June 30, 2011."

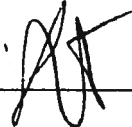
The Compensation and Payment Schedule set forth as Attachment 3 to the Agreement is hereby amended to extend the time of performance from "The request for payment must be received by the LLCP by June 30, 2010," to "The request for payment must be received by the LLCP by June 30, 2011."

The Compensation and Payment Schedule set forth as Attachment 3 to the Agreement is hereby amended to extend the time of performance from "Within thirty (30) days of acquiring the Property, but no later than July 30, 2010, AWARDEE shall submit to the STATE a copy of the recorded conveyance document transferring ownership of the 128 acres, more or less, in Nu'u Makai, southeast shore, Island of Maui to AWARDEE," to "Within thirty (30) days of acquiring the Property, but no later than July 30, 2011, AWARDEE shall submit to the STATE a copy of the recorded conveyance document transferring ownership of the 128 acres, more or less, in Nu'u Makai, southeast shore, Island of Maui to AWARDEE."


The entire Agreement, as amended herein, shall remain in full force and effect.

IN VIEW OF THE ABOVE, the parties execute this Amendment by their signatures, to be effective as of the date first above written.

STATE

  
\_\_\_\_\_  
Chairperson  
Board of Land and Natural Resources

AWARDEE


By   
\_\_\_\_\_  
Dale B. Bonar

Its \_\_\_\_\_ \*  
Executive Director

By   
\_\_\_\_\_  
Helen Nielsen

Its \_\_\_\_\_ \*  
Board President

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

\*Evidence of authority of the AWARDEE's representative to sign this amended agreement for the AWARDEE must be attached.

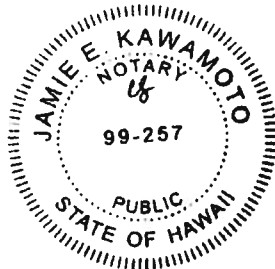


AWARDEE'S ACKNOWLEDGMENT

STATE OF HAWAII

\_\_\_\_\_)  
COUNTY OF Maui) SS.

On this 10th day of June, 2010, before me personally appeared Dale B. Bonar, to me personally known, who being by me duly sworn, did say that he/she is the Executive Director of Maui Coastal Land Trust, the AWARDEE named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the AWARDEE, and acknowledges that he/she executes said instrument as the free act and deed of the AWARDEE.



Jamie E. Kawamoto  
Notary Public, State of Hawaii

JAMIE E. KAWAMOTO  
My commission expires: Expiration Date: May 23, 2011

Notary Seal Affixed:

Notary Certification

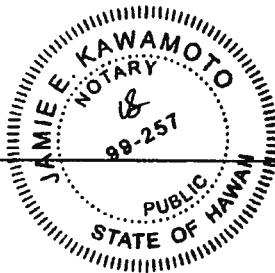
Document Date: undated at time of Number of Pages: 4

Notary Name: Jamie E. Kawamoto <sup>signing</sup> 2<sup>nd</sup> Circuit

Document Description: State of Hawaii Amendment No. 1 to  
Legacy Land Conservation Program Grant Agreement

  
Notary Signature

June 10, 2010  
Date



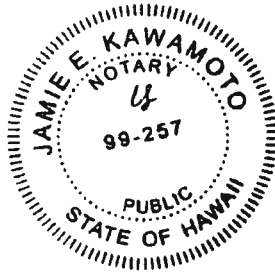
AWARDEE'S ACKNOWLEDGMENT

STATE OF HAWAII

COUNTY OF Maui

SS.

On this 10th day of June, 2010, before me personally appeared Helen Nickson, to me personally known, who being by me duly sworn, did say that he/she is the Board President of Maui Coastal Land Trust, the AWARDEE named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the AWARDEE, and acknowledges that he/she executes said instrument as the free act and deed of the AWARDEE.



Jamie E. Kawamoto  
Notary Public, State of Hawaii

My commission expires: **JAMIE E. KAWAMOTO**  
~~Expiration Date: May 23, 2011~~

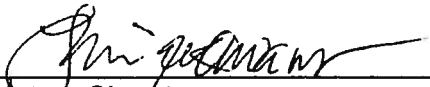
Notary Seal Affixed:

Notary Certification

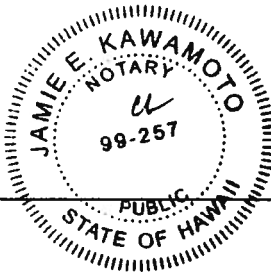
Document Date: <sup>Jan 10</sup> undated at Number of Pages: 4  
time of signing

Notary Name: Jamie E. Kawamoto 2<sup>nd</sup> Circuit

Document Description: State of Hawaii Amendment No. 1 to  
Legacy Land Conservation Program Grant Agreement

  
Notary Signature

June 10, 2010  
Date





## MAUI COASTAL LAND TRUST

### **Board of Directors 2008**

*President*  
Gilbert Keith-Agaran

*Vice President*  
Wesley Lo

*Treasurer*  
Janice Lau

*Secretary*  
Helen Nielsen

Susan Bradford

Lucienne de Naie

Michael Foley

William Kamai

Janet Lau

Kimokeo Kapahulehua

Dave Mackwell

Judy Mc Corkle

George Paresa

Jennifer Sabas

Steve Still

Hugh Starr

Patricia Stillwell

### **STAFF**

*Executive Director*  
Dale B. Bonar

*Development and  
Outreach Director*  
Diane Lee

*Project Manager*  
Scott Fisher

*Office Manager*  
Sally Gretz

*Land Steward*  
James Crowe

July 8, 2008

### **Evidence of Authority of Representatives**

I, Helen Nielsen, Secretary of Maui Coastal Land Trust, a Hawai'i nonprofit corporation, hereinafter referred to as the "Corporation", do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of the Corporation at its meeting duly called and held at the offices of the Corporation on the 26th day of September 2002, at which a quorum was present and acting throughout and that said resolution has not been modified, amended or rescinded and continues in force and effect (From Corporation Articles of Incorporation, as amended, September 26, 2002):

### **ARTICLE 10. EXECUTION OF INSTRUMENTS**

#### **Section 0.1 Proper Officers**

Except as hereinafter provided or as required by law, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts, bills of exchange, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, mortgages and other instruments or writings of any nature, which require execution on behalf of the Corporation, shall be signed by two different persons who are officers of the corporation, with the exception that checks in the amount of up to \$1,000 may be signed by one officer. Officers are not authorized to make any expenditure of \$1,000 or greater without express Board approval of such expenditure. The Board of Directors may from time to time authorize any such documents, instruments or writings to be signed by such Officers, agents or employees of the Corporation, or any one of them, in such manner as the Board of Directors may determine.

The names and addresses of current officers of the Corporation are:



President Gil Keith-Agaran  
24 N. Church St., Suite 409  
Wailuku, HI 96793

Vice President Wesley Lo  
1367 Ho`olako St.  
Wailuku, HI 96793

Treasurer Janice Lau Fergus  
POBox 1649  
Makawao, HI 96768

Secretary Helen Nielsen  
1942 Main Street, #104  
Waiuku, HI 96793

Executive Director Dale B. Bonar  
POB 880627  
Pukalani, HI 96788

IN WITNESS WHEREOF, I have hereunto set my hand the 10<sup>th</sup> day of July, 2008.



---

Helen Nielsen, Secretary

**Minutes of the December 14, 2007, Legacy Land Conservation Commission Meeting**

**DATE:** Friday, December 14, 2007

**TIME:** 8:00 a.m. to 4:00 p.m.

**PLACE:** Room 322b, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i

**COMMISSION MEMBERS PRESENT:**

Dr. Dale B. Bonar, Chair

Dr. Carl J. Berg

Dr. Joan E. Canfield

Dr. Charles ("Chip") Fletcher

Mr. Herbert ("Monty") Richards

Dr. Robert J. Shallenberger

Mr. Kaiwi Nui

Ms. Karen G.S. Young

**STAFF:**

Molly Schmidt, DLNR, DOFAW

Linda Chow, Deputy AG

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

**PUBLIC:**

Steven Lim, Carlsmith Ball, LLP

Scott Fisher, Maui Coastal Land Trust

Gary Maunakea-Forth, MA'O Organic Farms

Cheryse Sana, Waianae

Halona Kaopuiki, Kaū

David Smith, DLNR/DOFAW

Gregory Dunn, Hawaii Nature Center

Abbey Mayer, Moloka'i Enterprise Community, Ke `Aupuni Lokahi

Collette Machado, Moloka'i Land Trust

Danny Miller, Kaū Preservation

Jim Spielman, Kaū Preservation

James Leary, CTAHR, Univ. of Hawaii

Jenifer Benck, Carlsmith Ball, LLP

Kukui Maunakea-Forth, MA'O Organic Farm

Earl Louis, Kaū Preservation

Jody Kaulukukui, The Nature Conservancy

Gary Blaich, Kauai Public Land Trust

Jenifer Luck, Hawaii Island Land Trust

Lea Hong, Trust for Public Land

Casey Carmichael, Hawaii Nature Center

Harry Yada, County of Hawaii

Bob Jacobson, County Council, County of Hawaii

David Santisteven, Laulima Eco-friendly Alliance of Farms (LEAF)

**MINTUES:**

**ITEM 1. Call to order and introduction of members and staff.**

Chair Bonar called the meeting to order and the Commission members and staff introduced themselves.

**ITEM 2. Approval of Legacy Land Conservation Commission meeting minutes from September 27, 2007, and November 6, 2007, meetings.**

Member Canfield moved to approve the draft meeting minutes from September 27, 2007, and November 6, 2007, meetings. Member Young seconded, all were in favor.

**ITEM 3. Disclosure by members of the Commission of any potential conflicts of interest involving 2007-2008 projects.**

Chair Bonar stated that he would recuse himself from decisions regarding Maui Coastal Land Trust and that Member Fletcher would act as Chair in his absence. Chair Bonar stated that he would not rank proposals that he had a conflict with and the same would be true for any other members citing a conflict. Chair Bonar mentioned that the Commission consulted with the Ethics Commission staff and with statisticians in determining the method of ranking and recusal, to avoid both real and perceived conflicts of interest in deciding whether to recuse themselves. Member Shallenberger disclosed a conflict with the TPL/Honouliuli project on Oahu, stating that his employer, The Nature Conservancy, had a leasehold interest in the property and could stand to benefit.

Member Young stated that her daughter works for MA'O Organic Farm. She had contacted the Ethics Commission staff and had been informed that she need not recuse herself because her daughter is not a dependent. Member Young had called two times to verify this information.

She asked if any other Commission members had an issue with this connection and Chair Bonar asked if she felt she could be a fair and impartial judge. Member Young replied "yes."

Members Berg, Canfield, and Fletcher stated that they had no conflicts of interest. Chair Bonar stated that Members Richards and Kaiwi would be arriving shortly and would discuss any potential conflicts regarding those members at that time.

Member Shallenberger asked whether it would be necessary to remove himself from the room when TPL/Honouliuli was discussed. Ms. Chow stated that it is suggested, but not necessary, however a member's presence in room may influence other commission members. Member Berg stated that members ought to stay in the room and refrain from participation while a project was being presented, but ought to leave when deliberation occurred. Ms. Chow stated that Member Berg was correct.

**ITEM 4. Discussion of 2007-2008 project recommendation methodology (a list of applicants is attached to this agenda).**

Chair Bonar summarized the order of presentations and testimony as arranged on the agenda, stating the Commission would like to hear project presentations but preferred to limit it to new information to preserve time. The Commission would hear testimony following any project presentations, then discuss site visits, then go into deliberations.

Chair Bonar reviewed the time limits on testimony and their purpose. Chair Bonar asked if any presenters had a time conflict. Mr. Blaich mentioned an 11:15 a.m. appointment. Chair Bonar stated that he would stick to the order of projects on the list attached to the agenda unless presenters had time limitations.

Chair Bonar stated that each Commission member had reviewed the applications using criteria forms and would be using a one-to-five scale for ranking projects. He stated that some of the



lower-ranked projects may not receive full funding, depending on how much was left over (from \$4.7 million available) from the top-ranked projects.

Member Fletcher stated that members with conflicts may need to recuse themselves from any post-ranking discussions regarding project ties or apportionment of funding. Ms. Chow confirmed this.

Chair Bonar mentioned that, in past discussions, the Commission had unanimously agreed that the best project should be funded, rather than trying to apportion to a specific island or resource value. He stated that the Commission may have until May/June to re-apportion funds from any recommended project that did not come together as expected.

Chair Bonar stated for the benefit of the public attending the meeting that unrewarded funds will go back to Land Conservation Fund. Member Berg stated that the Commission gives its recommendations to the BLNR for final action, and that a consultation process with the Senate President and Speaker of the House also occurs. Chair Bonar discussed last year's process. Ms. Collette Machado asked whether a majority was required to pass a project, and whether the Chair votes. Chair Bonar and Ms. Chow replied that quorum (5) was required to pass a project and that the Chair was a voting position. She stated that the Commission was advisory to the Board of Land and Natural Resources.

Member Kaiwi arrived and introduced himself. He mentioned a conflict with the TPL/Honouliuli project and stated that he would recuse himself.

**ITEM 5. Optional presentations by applicants of new information or clarification of information concerning their proposal. Applicants should limit presentations to a maximum of 10 minutes to allow for questions from the Commission. (Public testimony on projects is appropriate under this item. The Commission requests that individual testimonies be limited to 3 minutes).**

Chair Bonar called for any presentations or testimony on the MA'O Organic Farm/Lualualei project. Mr. Gary Maunakea-Forth used a brief PowerPoint presentation to discuss background on the MA'O Organic Farms program and the project proposal. He stated that the program was about helping youth grow while teaching farming skills and producing goods for organic markets. He stated that farms in Hawaii were threatened and that it was difficult for rural communities to hold onto their identity without farms. He stated that the lease they currently held would expire and that they had been in discussions with the landowner regarding the parcel proposed for acquisition. He mentioned a business plan, project funding, expanding operations, stated that the project is ready to go, agreement of sale in place, match funds secured, organic certification submitted for consideration.

Member Canfield asked about the appraisal. Mr. Maunakea-Forth stated that the appraisal had come in at \$825,000, and the sale price is set at \$959,000 and would not go down. Mr. Hirokawa stated that he did not believe that the Department would allow for grants for over FMV acquisitions.

Member Kaiwi stated that the application should have addressed cultural values more clearly. Member Fletcher asked what the farm's source of water was. Mr. Maunakea-Forth answered that it was the City and County of Honolulu, about 4,500 to 5,000 gallons a day. He stated that composting was done to organic certification standards. Member Fletcher mentioned erosion control and Mr. Maunakea-Forth talked about their mulching practices and soil-protection efforts.

Member Berg asked if there had been any chemical use by the previous owner of the parcel. Mr. Maunakea-Forth stated that the soil hadn't been used since prior to 1986 for chicken farming, and that fungicide and some herbicide use was likely, but that MA'O Organic can remediate the soil if necessary.

Mr. Maunakea-Forth talked about the program's effectiveness in helping youth reach college.

Chair Bonar asked if the lands leased currently would still be used. Mr. Maunakea-Forth stated that they would carry on leasing the land but may not be able to buy.

Chair Bonar asked for other testimony regarding the MA'O Organic Farm/Lualualei project.

Mr. James Leary, a recent Ph.D. from UH Manoa and presently faculty at the College of Tropical Agriculture and Human Resources (CTAHR), stated that he was in charge of research on agriculture throughout Hawaii and bringing in federal funding for this research. He stated that he had found that many funders want active on-farm research. Has been successful in working with MA'O Organic to receive funds. Many grants involve both research and education and MA'O has this advantage to receive future funds and is currently providing a service to the University and CTAHR as a research site.

Cheryse Sana, a participant of MA'O Organic Farm Youth Leadership Program and recent graduate of Waianae High School as class salutatorian, testified that she participated in the program to learn about culture, kuleana, and how people are rooted back to the land. She stated that she had learned a lot about the connection between farming, the effects of loss of resources, and cultural values through the Leadership Program.

Ms. Lea Hong, Trust for Public Land, spoke briefly in support of the MA'O Organic Farm project, mentioning that the support from the agricultural community had been key in the passage of the Legacy Lands act.

Ms. Kukui Maunakea-Forth talked about how she had the opportunity to aspire as a young person because of strong cultural values and a belief in her own potential. Opio in our community do not have equal opportunities and we have the kuleana to give this to our young people. She stated how important college education had become since youth could no longer learn at the knees of their kupuna, and that she was proud to be part of a program that helped them in this way.

Member Richards arrived and introduced himself. He stated that he would be recusing himself from action on the TPL/Honouliuli project.

Chair Bonar recused himself from the discussion on Maui Coastal Land Trust/Nuu project and Member Fletcher took over as Chair.

Mr. Scott Fisher of Maui Coastal Land Trust (MCLT) presented additional information on the MCLT/Nuu project. He stated that the appraisal came in at \$5.5 million dollars and that the owner had agreed to sell for \$4 million. MCLT has raised \$2,794,500 for the project. He stated that Kaupo Ranch has made it clear that they must sell the property, and there is potential for subdivision and development, however Kaupo wishes to sell for conservation purposes and may

even support some management. Mr. Fisher stated that MCLT had made efforts to reach out to the local community, and that his location near to the remote property might make management less difficult.

Member Young asked the exact acreage of the acquisition, as there were conflicting numbers on the application. Mr. Fisher stated that 78 acres had been agreed to and MCLT was hoping to increase to 128 acres, which wouldn't increase the costs because of the unproductive nature of the land, however, is desirable to MCLT for preservation of archeological sites.

Member Shallenberger asked about management issues. Mr. Fisher stated that MCLT would replicate what it had done at Waihee, using federal Wetland Conservation Program, Natural Resource and Conservation Service funds, and State DLNR funds. Regarding actual management, Mr. Fisher stated that someone would be on the ground 2 to 4 days a week and that the local community would be asked for assistance and guidance. He stated that there would be a management plan similar to Waihee's.

Member Canfield asked whether endangered waterbirds nested on the property. Mr. Fisher stated that MCLT had seen coots and stilts, and that koloa had been seen there, but not nesting. Member Berg asked if the ducks were hybrid or koloa. Mr. Fisher stated he was unsure. Member Berg asked if the area was in a tsunami zone, Mr. Fisher replied that it partially was.

Mr. Fisher stated that the additional acres contained burial sites but an archeological survey had not been conducted. He stated that the appraisal had been done on the lesser amount of acreage.

Member Kaiwi stated that MCLT had shown a good balance of tradition and modern in its stewardship of Waihee. He stated that Mr. Fisher was correct in stating that there were cultural sites in the area and mentioned a specific family and asked whether MCLT had consulted any lineal descendents linked to the area. Mr. Fisher stated that he had contacted lineal descendents of families in the area but not that specific family. He stated that Kaupo, the closest community, would be consulted for the preservation and protection of cultural resources, the ecological restoration, and education efforts concerning the area. Member Kaiwi asked whether MCLT would allow access to the Native Hawaiian community. Mr. Fisher replied yes.

Member Fletcher asked for additional testimony. Chair Bonar returned to the room. After a five minute break, Chair Bonar asked if there was testimony for the County of Hawaii/Kawa Bay project.

Mr. Harry Yada, Property Manager for the County of Hawaii, briefly described the project. He stated that the completion of this project would complete the protection of the coast from Honoapo to Punaluu. He mentioned that the County had met with the owner and that he had a handshake agreement on the price of the property, which was less than the amount stated on the application. Based on that price, and the award of funds from Legacy the County could see the completion of the acquisitions by next year. He stated that the owner, Ed Olson, would contribute a portion of the sale proceeds back to the community and improvements on the properties. He stated that the County had enough money available to fund a management plan for the area.

Member Shallenberger asked about the status of the RLA funds. Mr. Yada stated that Ms. Hong would answer.

Member Fletcher asked whether Mr. Abel Lui was connected to this parcel. Mr. Yada stated that Mr. Lui claims some title to all of this area, and his house was situated on the parcel awarded funding last year. Mr. Yada stated that he had a preliminary title report and that attorneys were currently scrutinizing the issue of title. Member Fletcher asked about the relationship between the County and the Lui family. Mr. Yada stated that previous owners had stated that Mr. Lui had no claim, but that he could not state for certain until the attorneys produced results.

Chair Bonar stated that any information Mr. Yada could provide to demonstrate clear title would help the Commission. Mr. Yada stated that there was a quiet title action and settlement with one parcel, but that this parcel is not included in the project proposal.

Member Richards stated that C. Brewer had owned the land for a very long time. Mr. Yada stated that the County had no interest in purchasing land with unclear title, but at this point, would try to move ahead until situation clarified. Chair Bonar asked if there were exceptions on the title report... Mr. Yada stated that there had been a claim in the 80s but there had been no result from the claim.

Member Young asked what Mr. Hirokawa had found regarding title research on this year's parcels proposed for acquisition. Mr. Hirokawa asked Mr. Yada about last year's Kawa parcel. Mr. Yada stated that he could not speak to the matter until hearing from the County's attorneys.

Member Kaiwi stated that he was interested in what relationship the county proposed to have with the host culture in the area. Member Kaiwi stated that Mr. Lui came to the land as a steward and did not perceive property lines, and that government should seek to meet the Lui family halfway instead of expecting them to view the situation from a lawyer's standpoint. He asked: how will the family be incorporated into the management plan?

Mr. Yada stated that the mayor looked at the situation and told the county that he was willing to work with the family. The County's interest is to protect the land for the public, and hoped to work with Mr. Lui and the entire community.

Member Kaiwi stated that working with the appropriate family will assist the County with the caretaking of cultural sites, because, culturally speaking, not any family can access the site. He urged the County to incorporate the right people at the beginning of the process.

Member Berg asked about the status of the funding from the County. Mr. Yada stated that the County was able to purchase a parcel and had another in escrow from last year... in terms of what the owner of the land had agreed to, the County will have enough money to complete the sale with or without the RLA money.

Mr. Yada stated that the Kawa parcels were the highest priority on the county list.

Member Young asked what the price had been reduced to. Mr. Yada stated that he was not comfortable disclosing the amount based on the handshake agreement. Chair Bonar asked if any potential Legacy award could be reduced to create the possibly of funding more projects. Mr.

Yada stated that until he had an agreement he could not state whether the award should be reduced and that looking to 2009 was beyond his viewpoint.

Member Young stated that she had witnessed Mr. Lui's house structure on the property. Mr. Yada stated that the structure was on another (last year's) parcel and was not a permanent structure.

Chair Bonar asked Mr. Hirokawa the State policy on expending funds on parcels where the title was not clear. Mr. Hirokawa stated that it was not always forbidden but may depend on a higher level policy decision.

Member Shallenberger stated that the Commission had not made clear title a condition of award, and ought to be cautious about applying it as a condition.

Chair Bonar asked the next project to present.

Ms. Hong spoke about the County of Hawaii/Kawa project and showed a brief PowerPoint of sites on the property. She pointed out how cultural sites showed signs of having been cared for. She stated that RLA funds should be available if Congress continues to fund the program at current levels. She stated that title to the properties in question had been quieted in a previous court action. She talked about the chain of title to the Kawa property funded last year, stating that there was some evidence that title was clear.

Member Kaiwi responded that title can move around, but who is responsible for the management of the land?

Ms. Hong stated that the owner would potentially donate access easements and management funding, and that a community organization had also been interested in participating.

Mr. Yada stated that the County Dept. of Parks and Recreation had expressed interest in managing the recreational areas. Ms. Hong stated that she had seen kolea and endangered petrel on the property.

Mr. Bob Jacobson stated that he had spoken to mayor, who wants to work with Mr. Lui. He stated that he believes there is quiet title... he stated that there was a need to respect and honor man and that his health was not well. Mr. Jacobson stated his support for this project as it would protect the coastline up to Punaluu.

Jim Spielman of Kaū Preservation stated that he had spent hours on the beach and with Mr. Lui. He stated that the overall community would revolt if Mr. Lui was forced off of land, especially the youth and the surfers.

Mr. Earl Louis stated that he lived in the area and that Kawa is special place. The abundance of fresh water and abundance of fish... and that fish from there is especially delicious. He stated that back in the 70s his family fought for a right of way with property owner Okuna. He stated that the bottom line is that Kawa is unique and precious place and that Mr. Lui is a good steward should stay and protect land.

Ms. Colette Machado requested that the Moloka'i project be moved ahead on the agenda. Chair Bonar stated that the Moloka'i and Kauai projects would be moved ahead.

Gary Blaich of Kauai Public Land Trust and Jenifer Luck gave testimony in support of the Kauai project. Mr. Blaich provided a handout and photos of the property, and explained how the proposed acquisition fit into KPLT's plan for preserving the coastal area adjacent to the Kilauea Point National Wildlife Refuge. Mr. Blaich stated that the landowner waited seven years to sell the property and that RLA funds had been secured in the amount of \$2.7 million... the appraisal in at \$3.4 million.

Member Shallenberger asked about management plans. Mr. Blaich responded that there were both short and long-term management plans. He stated that the lands had been authorized for inclusion to the Refuge. He stated that the current "coastal preserve" phrase is an interim label until lands are officially made part of the national refuge.

Member Canfield asked whether the condo ownership scheme that Mr. Hirokawa had mentioned would cause issues. Mr. Blaich stated that all three parcels to be acquired were a part of the scheme, and that KPLT could dissolve/extinguish the scheme after acquiring.

Member Berg asked if Mr Blaich had the CC&Rs (codes, covenants, and restrictions) for the property. Mr. Blaich stated that KPLT's attorney had a copy.

Member Young asked about the status of the match. Mr. Blaich summarized the matching funds.

Chair Bonar asked if the landowner was comfortable with the appraised value. Mr. Blaich said that the owner was amenable, but had been disappointed in the appraised value, so no bargain sale was likely.

Chair Bonar called for testimony on the next project.

Mr. Abbey Mayer, executive director of the Moloka'i Enterprise Community (MEC), presented testimony on the Moloka'i Land Trust (MLT) / Ke `Aupuni Lokahi project. He passed out some informational materials, including a letter of commitment from the landowners for the fair market appraised value price as reported by Hallstrom Group. He stated that preliminary approval on the subdivision application was granted. He stated that the section of the property containing kuleana parcels would be retained by the landowner.

Mr. Mayer stated that Ke `Aupuni Lokahi would not be using federal FRPP funds, but that USDA may assist with management funds. He stated that there were a plant inventory and stream survey and that there was no stewardship plan in place, but that the land trust has a model for creating plans. He stated that for a 16-acre parcel from Moloka'i Properties Limited, the land trust had brought in visitors to help with restoration and stewardship. He mentioned the letters of support included in the materials and stated that the newly-preserved Dunbar Ranch was a direct neighbor, increasing the preservation value of this property.

Member Shallenberger asked about the difference between the agreed upon purchase price and the market price. Mr. Mayer stated that they were working on subdividing... and that the purchase price was prior to subdivision... the owner would retain 16 acres and the remaining 196

acres would be sold to the land trust. The appraisal was on the 196 acres that the land trust will purchase.

Member Shallenberger asked whether plans included fencing. Mr. Mayer stated that some areas would do well with fencing, but that MLT would have to work with the community to create a plan. A botanist had recommended fencing. Member Shallenberger asked how fencing and ungulate control and subsistence hunting in proposals would be reconciled. Mr. Mayer stated that this issue could be determined after the land trust gets community feedback.

Member Fletcher asked whether the property had been deforested. Mr. Mayer stated that the lower reaches had been deforested and the above area was native, in healthy condition with some invasives.

Chair Bonar asked about access and ownership, and whether access would be through the 16-acre piece. Mr. Mayer replied yes; and that there was no practical access except for the road depicted in the photos/maps. Mr. Mayer stated that a previous owner had been Brownie Gilman, who had acquired in 1920s.

Member Kaiwi stated that he had been impressed that MLT demonstrated community involvement and stewardship and knows cultural sites as well as anyone and their family involvement is top-notch. Mr. Mayer stated that MLT was organized around community involvement.

In response to questions from the Commission, Mr. Mayer stated that MLT is looking at private funds and donors, but that FRPP funds would not be used. They are looking at MEC set-aside funds and has raised \$500,000 per year last few years that MLT would be willing to allocate those funds to this project. The owner wants to close by end of 2008.

Mr. Halona Kaopuiki stated that he was born and raised on Moloka'i and that Moloka'i has the most fish ponds in Hawaii. He stated that the Commission does the total package as a funder for cultural and natural resources, and that he would bring to them the spiritual and cultural value of the land. He talked about the history of the west side, his family and kupuna. He talked about the lifestyle on Moloka'i and the unique qualities of the land and resources, and briefly told the Commission about moolelo concerning the area.

Ms. Machado stepped forward to inform the Commission on MLT. She talked briefly about MLT's staff and their expertise, stating that there were always five or more Hawaiians on the board to try to represent the makeup of demographics on the island of Moloka'i. She mentioned MEC set-aside funds of over half a million dollars and additional set aside funds for legal counsel. Ms. Machado stated that despite criticism of Lau'au point, they had developed reputable land trust with protection and management as its priority. She talked about how meaningful it was to her to have a non-Hawaiian family willing to dedicate its land to Hawaiians, given that she grew up in a time when wasn't reputable to be Hawaiian with only approximately 4% of Hawaiians in college and many in jail. Ms. Machado stated that part of the MLT mission is research, to get history intact, to teach conservation, and that MLT has received criticism for Lau'au point but that the land trust has been able to generate resources and support and planned to hire more staff.

Chair Bonar called for testimony on the next project and reminded the project applicants that they also have the opportunity to present before the BLNR.

David Smith, the Oahu District Manager for the DLNR, DOFAW, presented testimony on the DOFAW/Hamakua project. He stated that the application had asked for the full amount of funding but had also asked for RLA funds. He stated that the project would be ready to go as soon as it was funded and that the project ranked third in its region for RLA funding. If RLA funding comes in as expected, the proportion of funding will be 60% RLA funds and 40% Legacy Land funds.

Member Shallenberger asked what would happen if the project were not funded. Mr. Smith replied that a retirement home may be built on the land. He stated that the owner had a duty to make money for its trust.

Member Berg asked if there was any protection on the land in the form of an easement. Mr. Smith replied that the easement on the property was a slope easement belonging to the county for a roadway.

Member Canfield asked what amount Mr. Smith was asking for. Mr. Smith stated that \$482,000 would be the amount needed if RLA funds come through. Chair Bonar asked about the likelihood of a landowner donation. Mr. Smith responded that the owner was a trust with a fiduciary duty to get FMV for the property.

Member Canfield asked where the land would be developed. Mr. Smith stated that an elder care facility would wrap around the entire parcel. Mr. Smith mentioned cultural resources on the property and stated that representatives of the Hawaiian community were looking to put a burial mound on property. He stated that the parcel is mostly watershed and reforestation, only a small amount is marsh.

Member Kaiwi stated that it was incorrect to state that the area “was” a prime area for native Hawaiians in the past... it “is” a prime area for native Hawaiians. Mr. Smith stated that Chuck Burrows is a source of cultural expertise for DOFAW at Hamakua.

Member Young asked about funding and tax assessed value. Mr. Smith stated that DOFAW would not find out about RLA funding until March, and that the county tax value is lower than the Yellowbook (federal appraisal standard) appraised value.

Member Berg stated that the property seems to have minimal value as forest, as it was degraded and not pristine. Mr. Smith stated that normally DOFAW would not even take a 20-acre parcel, but the point of this project is the exceptional educational value and public interface because it is right there in Kailua town... the parcel ties together scenic open space, watershed, endangered species, and high restoration value.

Member Berg asked how the project fits in with Legacy Land priorities if it is degraded. Mr. Smith stated that wetlands are threatened, and that the land has recreational and scenic value... a jewel in the midst of an urban environment.



Member Shallenberger stated that his perspective was that this was a key resource piece as a functioning watershed and place to view waterbird species in an urban environment; however, it falls under Legacy Land priorities as a threatened piece of land.

Member Fletcher stated that the state had lost one-third of its wetlands over the past century ... and that this parcel had been successfully restored and the species had come back in the midst of an urban environment.

Member Richards stated that his experience had been that unless the State steps up to protect these places they will be gone.

Chair Bonar called for the next project, stating that there had been a request to move testimony on the County of Hawaii/Punaluu project up the agenda. Chair Bonar called a brief break. Upon return, the Commission informally decided to skip a lunch break in hopes of completing all testimony.

Mr. Bob Jacobson, Council member for the County of Hawaii, presented information on the three County of Hawaii/Punaluu projects. Mr. Jacobson stated that the fact that several attorneys had arrived at the meeting to represent the developer's interests signaled how threatened the property actually was. He stated that the County was working on partnership with Bishop Estate and the Office of Hawaiian Affairs (OHA) to purchase/manage. He stated that there is no appraisal but is currently listed for sale and developers have the first option to buy. He stated that the acquisition was complicated but worth the effort. He stated that the acquisition was not first on the county's open space list, but near the top. He talked briefly about the value of the land and any liabilities associated with it. He then talked about proposed management and the huge community and scientific community support for the project. He talked about how the Honoapo project had spurred protection of Kaū coastline.

Member Canfield asked if there was a willing seller. Mr. Jacobson stated that he had no letter from the owners but that the land was on the market. He stated that the county also had the power of eminent domain. Member Berg asked if there was clear title. Mr. Jacobson stated that he thought C. Brewer had bought it from Bishop Estate and he was fairly certain title was clear.

Member Berg asked about management. Mr. Jacobson stated that nonprofits specific to the area will probably have a hand in management and public access will be available.

Member Berg asked about endangered species. Mr. Jacobson stated that hawksbill turtles, green sea turtles, monk seals, and some sea birds had been on the property.

In response to a question about willing seller, Mr. Jacobson talked about the circumstances surrounding the acquisition.

Member Shallenberger asked: how far mauka? Mr. Jacobson stated that these three parcels do not touch golf course. Member Young asked whether development could move forward. Mr. Jacobson stated that he does not consider their EIS high quality and that a number of respected individuals had put in complaints. The special management area (SMA) permit will be handled by Land Use Commission.

Member Canfield asked about the differences in the figures on the applications between the acquisition costs and matching funds sheets. Mr. Jacobson stated that the FMV had been problematic, so the County had asked for a smaller amount to increase chances of funding.

Chair Bonar asked if the county funds were secured. Mr. Jacobson stated that it was uncertain if Kawa would be funded or if additional funds would be provided from elsewhere. He stated that they were looking at different sources.

Chair Bonar asked for additional testimony on the Punaluu project.

Mr. Louis stated that above Punaluu there are five different puus, between and below the puus there is a huge crater filled with fresh water. It is a very pristine and unique area, there are three kuleanas, his family been there eight generation from mahele. They are the alii mokus that manage the land. When in 1960s Bishop Estate did land swap for Hilo land, they developed golf course, condos in 70s , sold in late 80s for \$33 million. A Japanese firm purchased the property and sold to owners for \$2.5 million dollars and they did nothing with it for several years until Sea Mountain 5 developed and destroyed the place.

He stated, that if forced to choose between the Punaluu and Kawa properties, he would save Punaluu. He stated that throughout history, Kaū has never been defeated... all the people from the Big Island come to Punaluu for natural beauty and are educated about old Hawaii.

Member Berg asked how many people used the beach at Punaluu. Mr. Louis answered 1,200 a day, about 34,000 a month. He added that burial caves, hoary bats, kolea, three different heiau are all located in the area. He talked about how visitors can see the fresh cold water from under Punaluu flowing out into the ocean.

Danny Miller from Kaū Preservation testified for Punaluu. He stated that the goal is to preserve all 80 miles because it is a rarity in a world, and that they chose these three parcels because are most critical. It is the only public beach park in Kau and one of the only accessible black sand beaches in the State. He stated that the most amazing thing about Punaluu is the amount of water flowing out; the other major aspect is the educational value from a cultural standpoint. He mentioned the unique heiau in the area. He stated that the reason that supporters are here is that there is a proposed development and the situation is critical.

Mr. Spielman, testifying for Punaluu, stated that he would ignore notes and talk from heart. He stated that it is irreverent and wrong to allow that property to be developed commercially, and that the issue is partially an ethereal thing, and not earthly and practical. He spoke about people that had been involved in preservation efforts.

Steve Lim of Carlsmith Ball, LLC, testified. He stated the current owner is SM Investment Partners and that his client is Sea Mountain 5 (SM5). He stated that SM5 has a binding contract to purchase the area in question ... During county proceedings on the Punaluu resolution... SM5 testified that would not be willing to sell only a portion of the project because to chop it up would destroy the project. He stated that whether people like or don't like the SM5 project, Punaluu is recognized by everyone, including his client, as special place. SM5 sees a property that has been zoned resort for 20 years now with a deteriorating water system and deteriorating

sewage plant, and SM5 proposes to bring new infrastructure and develop to it into a world class resort.

He stated that the owner was not willing to sell any small portion, and although they respect Earl Louis' and Pele Hanoa's relationship to the property, SM5 has a different perspective on how to protect it.

Chair Bonar asked about the appraisal... \$3.5 million by real estate appraiser... nonconforming preexisting use.

Member Kaiwi stated that he was glad to hear the cultural aspects of the property ... adding lands to an open space portfolio is weak in his opinion.

Chair Bonar called for the next project. Mr. Gregory Dunn presented information on the Hawaii Nature Center (HNC)/Makiki project. He talked about the funding and support for the project. Member Shallenberger asked about fundraising strategy for the planned changes to the property. Mr. Dunn estimated that one-third of the funds would come from DLNR and estimated the entire cost would be \$10 million.

Member Canfield asked whether HNC had gotten funds from Weinberg before. Mr. Dunn said yes, the way the grant works is have to prove you've raised two-thirds of the money before even asking for funds. Chair Bonar asked if neighbors were in support of the project. Mr. Dunn replied that they were.

Chair Bonar called for the next project.

Ms. Lea Hong presented information on the TPL/Honouliuli project. She stated that TPL had an appraisal completed and Army Compatible Use Buffer (ACUB) funds ready to go. She stated that multiple holders were available for the property if OHA was not available- both The Nature Conservancy and DOFAW. She stated that the project would not receive U.S. Fish and Wildlife Service funding. She stated that due diligence materials would be released in January 2008 and that OHA's board could not make a recommendation to its Board until it has these materials.

Chair Bonar asked if army funding was secure. Ms. Hong stated that it was. Member Canfield asked if OHA was still the best bet as landowner. Ms. Hong stated that she though OHA was still interested, and may be the best ownership entity in terms of partnerships.

Jody Kaulukukui of The Nature Conservancy (TNC) testified that TNC would act as a holder if needed. She stated that the Army is best management source and that TNC would take lease and keep fee ownership. She stated that the biggest threat to preserve is the potential loss of resources if there is no manager there. Ms. Hong added that TNC did make a commitment to donate back any interest from the leasehold.

Chair Bonar called for the next project.

Ms. Hong used a PowerPoint to present information on the TPL/Lapakahi project. She stressed the need for management and stated that the applicant had a tentative agreement with the Reich trust. The appraisal had come in at \$2.5 million. To apply for LWCF funding, applicants can't apply without match. She stated that Martha Yent of State Parks is administering the grant and is

pretty confident in receiving the funds. It is the last piece of the park to be acquired, lots of community organizations willing to get out to the land and remove threats.

She stated that Lapakahi is on the Hawaii County open space list but at a much lower ranking than Kawa. There was \$800,000 available from State Parks and \$44,000 from TPL. Ms. Hong stated that the landowner indicated, tentatively, that it was interested in the appraised amount

Member Shallenberger asked what threats existed to the land. Ms. Hong replied that the current landowner is marketing for residential potential. This would be "domino parcel" in a pristine and archeologically important area. Development is allowed under rules if developer obtains a Conservation District Use Permit. Management funding sources may be available and, given the motivated community, a hui would probably form to manage.

**ITEM 6. Discussion by members of the Commission of the 2007-2008 applications, including any discussion of site visits to the 2007-2008 project sites by Commission members.**

Chair Bonar stated that the Commission would review site visits by project as listed on the table attached to the agenda.

Members Young and Canfield discussed their visit to the MA'O Organic Farm project site. Member Canfield commented that on the farm's current leased site, relations with the landowner were not so good, the farm would work to use HUD funds to refurbish house at new site. She commented on the good energy and partnerships and impressive program.

Member Kaiwi stated his admiration for the fact that the farm actually used the things that they are trying to conserve. Member Fletcher commented that he was pleased to see this project after last year, that this is almost a dream agriculture project in terms of being in line with the program's goals.

Chair Bonar stated that the elephant in the room is that the landowner will not take less than stated amount and appraisal is lower. Member Shallenberger suggested giving the applicant two months to cut a deal at or below FMV. Member Kaiwi added that this applicant was the only one that brought a young native Hawaiian that can attest to the program.

The Commission agreed that the MA'O project, if ranked, would be recommended only on the condition that they provide a legitimate appraisal that is at or above the agreed upon sales price or if they are able to persuade the seller to come down to an appraised FMV.

Members Fletcher and Kaiwi discussed their visit to MCLT/Nuu project site. Member Fletcher stated that he had found the site to be fantastic in terms of resources... wetland with about 30% invasive plants... surrounding is landscape, coastline is unique vertical lava flows. Member Kaiwi stated that he had also gone to Waihee and the work done there had been impressive and stunning. He said that there had been a very patient and methodic restoration process, but added that he was worried about the management of the Nuu parcel due to the size and location of the parcel. Member Fletcher stated that the Nuu parcel is far away and required about 15 minutes on dirt road before you get to it. He stated that it was the only wetland on south shore Maui, however, the management plan had some visible challenges.

Member Berg commented that MCLT was able to do massive restoration at Waihee because the community was right there. In this case it might not be as proactive as a restoration project unless they have the organization to take it on. Member Shallenberger stated that he was nervous about wetland management because he knew how much commitment it can take, however he thought the wetland is important enough that they can do it. Member Fletcher mentioned that Mr. Fisher of MCLT lived nearby the site and can go over couple times a week

Member Young stated that sections G and H of the application were not submitted until requested.

Member Kaiwi stated that Mr. Fisher had a good balance of traditional and contemporary knowledge, important to link up with community.

Members Shallenberger and Richards discussed their visit to the County of Hawaii/Kawa project site. Member Shallenberger stated that what wasn't clear in Ms. Hong's comments is that it is a rough separate road to get there. He stated that Kawa is a terrific place, but that he supported Kaū Preservation's goals of 80 miles of protected coastline. He stated that Kawa was not a good native coastal strand... upslope is virtually all exotic, so is not protecting vegetation, is protecting shoreline. He commented that the heiau is very special and public access would be popular in the community and that it was an important hawkbill beach.

Member Berg stated that the Commission is now sensitive to management issues and has expressed that to the county. Member Shallenberger stated that the management plan will have to cover multiple things, however, landowner Ed Olson is very community oriented and that the project is striking while the iron is hot with a cooperative landowner. Chair Bonar stated that the project deals with resources that are not so threatened right away but are going to be soon. Member Kaiwi was hoping that applicant would refer to the Ala Kahakai Trail and address what Punaluu and Kawa project proponents are doing together to take care of the trail.

Members Berg and Fletcher discussed their visit to the KPLT project site. Member Berg stated that they had went to adjacent landowner for overview and walked down bluff along beach and saw numerous stone sites and could see how this property tied into other beach properties. Member Berg stated that the parcel was one little piece to tie together preserve and that KPLT has gotten the community together to manage the area. For many years the homeless lived there, but the community has recently taken it back, cleaned it, and maintained it. He stated that a large part of the site is a bluff that might not be developed if KPLT does not buy it. Member Fletcher stated that a significant portion of the purchase is nearly vertical land, but if they can build on it they will, and several acres are on beach and quite build-able. He stated that the bluffs were heavily vegetated and while there were not many birds on that property there were on adjacent cliffs.

Member Shallenberger commented that it was an original FWS objective to protect that property from 20 years ago. He stated that one of the reasons that the albatross are on adjacent cliffs is that is where they're released.

Members Fletcher and Canfield discussed their visit to the site of the Hamakua project. The Commission discussed the lack of properties with pristine resources intact. Member Canfield stated the uses for waterbird habitat restoration and education. Member Fletcher stated that, if the RLA grant comes in, the project will only need \$447,000.

Member Kaiwi stated that when this project talks about community, it is talking about the Kailua community, and asked how this affected the decision.

Members Canfield and Fletcher talked about their visit to the site of the Hawaii Nature Center/Makiki project. Member Fletcher stated that he had a problem with spending this much money for what was essentially a driveway; that it was an excellent project but outside the purview of this funding program. Member Young stated that she thought that the applicant was planning to build a 15K sq ft structure. Chair Bonar stated that the HNC project was not appropriate for Legacy Land, but perfect for CIP funding.

Members Canfield and Fletcher discussed their visit to Honouliuli. They stated that they had seen elepaio and many resources on the property, that there are 30 people that work there and that the Army management funding will continue for decades. Member Berg stated that the matching fund information was vague. Chair Bonar stated that hopefully OHA will be able to spring, Commission members must consider this individually in our rankings.

Members Shallenberger and Richards discussed their site visit to the Lapakahi project site. Member Shallenberger stated that the area had a good community group to care for it and this group could help to preserve the cultural resources on the site without a transfer of ownership. He stated that he was surprised that the group was not trying harder to preserve the site under its current ownership.

Chair Bonar and Member Kaiwi discussed their site visit to the MLT project. Chair Bonar mentioned the kuleana issues. Member Young stated that she was concerned about the match. Member Shallenberger stated that the upper habitat on the parcel was very intact... but that the land trust may be biting off more than they can chew in terms of management, they would have to make decisions about use. Chair Bonar stated that the parcel was on Moloka'i, therefore issues will be resolved like others on Moloka'i. Member Kaiwi stated that it had been encouraging to see both sides come together and do what is right for the aina.

Members Richards and Shallenberger discussed their site visit to Punaluu. Member Shallenberger stated that it had been hard to sort out locations by the application map, but he could tell by Mr. Jacobson's map that parcels being proposed for acquisition were key parcels. Member Young stated that if the landowner was not willing to sell, the Commission should not recommend the project. Member Canfield stated that the application had not been put together well.

Mr. Smith asked to amend requested amount for the Hamakua project to \$447,000 (match is \$723,000). Chair Bonar noted the change.

**ITEM 7. Commission recommendations regarding 2007-2008 projects to the Board of Land and Natural Resources for funding from the Land Conservation Fund. Depending on time constraints, this item may be rescheduled for a future meeting.**

The Commission members filled out individual ranking forms and turned them into Ms. Schmidt. Members that had recused themselves from certain projects abstained from voting on

those projects. Member Fletcher, Ms. Chow, and Ms. Schmidt averaged the scores and provided the list of ranked projects. **[Please see the attached list for the results of the ranking.]**

Two projects tied for first place and two projects tied for third place. Starting with \$4.7 million, the top projects were fully funded and \$1,763,000 was left to the two projects tied for third place. A sum of \$2,151,800 was requested by the projects in third place, leaving a difference of \$388,800 from the leftover funding available.

Member Canfield proposed reducing the amount awarded to each of the projects in equal proportions. Member Fletcher made the motion, Member Young seconded. Member Kaiwi abstained based on his disagreement with the concept of partially funding a project. All other members were in favor and the motion passed.

Member Berg motioned to fund the five top-ranked projects as discussed (with proportionately reduced amounts for the last two), provided that the Commission may revisit the motion with another meeting if there are any imminent changes in the funding for these recommended projects that may enable the Commission to recommend alternate projects. The motion was seconded and approved unanimously.

**ITEM 8. Set next meeting date(s).**

The Commission discussed the possibility of meeting in early February.

**ITEM 9. Announcements.**

**ITEM 10. Adjournment.**

Member Fletcher moved to adjourn, Member Berg seconded and all were in favor.

**2007-2008 Applicants to the LLCP – LLCC 12/14 Rankings**

rank	Agency/ organization:	Hol der:	Location:	TMK:	Size:	Match \$:	Amount requested:	Total Estimated Project Cost:
(1)	Waianae Community Re-development Corporation (MA'O Organic)	""	86-148 Puhawai Rd., Lualualei Valley, Waianae, Hawaii	8-6-008:004	11 acres	\$250,000	\$737,300	\$987,300
(1)	County of Hawaii	""	Kawa Bay, District of Kau, County of Hawaii on the Southeast tip of the island of Hawaii	(3) 9-5--016:025, (3) 9-5-016:006, (3) 9-5-017:005	550.871 acres	\$6,180,000	\$1,500,000	\$7,680,000
(2)	Kauai Public Land Trust	""	Parcel fronting Kahili (Rock Quarry) beach located on the north shore of Kauai, within proposed Kilauea Coastal Preserve	(4) 5-1-005:016	20.532 acres	\$2,759,181	\$700,000	\$3,459,181
(3)	Maui Coastal Land Trust	""	Nu'u Makai, located on Maui's south east shore between Kanaio and Kaupo at the foot of Haleakala	(2) 1-8-001:001 (portion), (2) 1-7-004:003 (portion)	128 acres	\$4,790,000	\$1,214,300 (rec'd \$994,724)	\$6,004,300
(3)	Ke 'Aupuni Lokahi, Inc. (Moloka'i Enterprise Community)	ML T	Mauka of Kamehameha V Hwy, Mile 17, on both the east and west sides of the Kawaikapu/Kainalu stream, Manā'e, Moloka'i. Property ranges from sea level to 2,100 ft elevation including Kawaikapu waterfall	(2) 5-7-005:021	196.40 acres	\$351,000	\$937,500 (rec'd \$767,976)	\$1,288,500
(4)	The Trust for Public Land	Stat e	Lapakahi, North Kohala, ahupua'a of Kaipuha'a and Lamaloloa, southern end of Lapakahi State Historical Park, Island of Hawaii	(3) 5-7-001:0011	17.05 acres	\$844,000	\$1,700,000	\$2,544,000
(5)	DILNR/DOFAW	""	Hamakua hillside (Pu'u O Ihu), adjacent Hamakua Marsh Wildlife Sanctuary, Kailua, Oahu	(1) 4-2-003:017	65.562 acres	\$723,000	\$447,000	\$1,205,000
(6)	The Trust for Public Land	Oil A	Honouliuli Preserve is located on the eastern slope of the Waianae Mountain Range above the Pearl Harbor Aquifer, Island of Oahu	9-2-005:013	3,582 acres (portion of a larger 4,969.14 acre parcel)	\$5,300,000 to \$5,800,000	\$1,000,000	\$6,300,000 to \$6,800,000
(7)	Hawaii Nature Center	""	In Makiki Valley on Oahu at the hairpin turn on Makiki Heights Dr.	2-5-020:007	18,000 sq feet	\$605,000	\$1,800,000	\$2,405,000
(7)	County of Hawaii	""	Makai of Highway 11 in the Punalu'u District of Ka'u, on the southeastern coast of the Big Island of Hawaii	(3) 9-6-001:006	5.992 acres	\$130,000	\$125,000	\$255,000
(7)	County of Hawaii	""	Makai of Highway 11 in the Punalu'u District of Ka'u, on the southeastern coast of the Big Island of Hawaii	(3) 9-6-001:003	3.573 acres	\$80,000	\$75,000	\$155,000
(7)	County of Hawaii	""	Makai of Highway 11 in the Punalu'u District of Ka'u, on the southeastern coast of the Big Island of Hawaii	(3) 9-6-001:002	1.953 acres	\$25,000	\$50,000	\$77,500